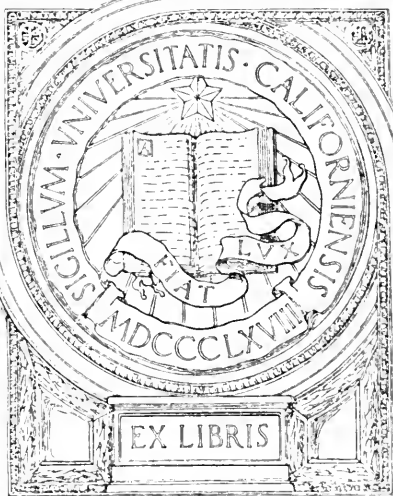




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# FOUR LETTERS

ON

## The English Constitution.

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- I. ON DIFFERENT OPINIONS CONCERNING  
THE ENGLISH CONSTITUTION.
  - II. ON ITS PRINCIPLES.
  - III. ON ITS DEFECTS.
  - IV. ON THE BEST MEANS OF PROMOTING ITS  
FUNDAMENTAL PRINCIPLES.
- 

BY G. DYER, A. B.

FORMERLY OF EMMANUEL COLLEGE, CAMBRIDGE.

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Ce n'est point à moi à examiner si les Anglois jouissent actuellement de cette liberté, ou non. Il me suffit de dire qu'elle est établie par leurs loix, et je n'en cherche pas d'avantage. Montesquieu de *L'Esprit des Loix*. *It is not my business to examine, whether the English actually enjoy this liberty, or not. It is sufficient for me to say, that it is established by their laws, and I inquire no farther. Montesquieu's Spirit of Laws.*

Nam non nisi optimis legibus populum regere licet, etiam ut dicit Philosophus; Natura deprecatur optima—Nonsunt hæc tantis celata mysteriis, ut de liberatione egeant ingenti. Fortescue de *Laudibus Legum Angliæ*, cap. vii. *For a people should not be governed, but by the best Laws, even as the philosopher saith, Nature seeketh the things which are best.—These things are not concealed in so great mysteries, as to require great deliberation. Fortescue on the Praises of the Laws of England, ch. vii.*

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THIRD EDITION, WITH ADDITIONS.

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## Preface

TO THE EDITION OF 1812.

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**T**HESE Essays were first published in a Miscellany, as Letters: they were republished, because they needed some corrections; and because the writer thought, that, in some material points, they were susceptible of improvement.

APR 26 1938  
HARDING  
It was suggested, indeed, that the times were favourable to the publication; though he was not sanguine on that head. Temporary questions have a chance of becoming popular by local pleas, or by accidental circumstances. But there is nothing in the aspect of the times so auspicious to political discussions; and these Letters proceed on the most general principles, addressing all Englishmen, and applicable to all times: and as for any purpose of a popular election (being first printed just after one) they came too late; so for men asleep over poli-

circumstances in the state of society : and although men of the best English feelings may even deem the removal of sundry difficulties to be remote, yet it is something, to know where any of our maladies are lodged, and to perceive the legitimate remedy.

As to the present writer, he can hold out no new light, not having discovered any new truth : but he professes to have employed some industry in ascertaining the claims of the different parties in this country, and in examining their justice. *Lectis non illis tantum, as Grotius says on another subject, sed et Judæorum pro Judaica vetere, et Christianorum pro Christiana religione scriptis, uti voluisse meo qualicumque judicio.*

Each party brings its particular claim. Do not, then, all their particular claims, if just, imply a general claim ? For who are we, and whence our privileged pretensions ? The writer has endeavoured to select each particular claim, and to make of them one general claim ; a wreath composed of several flowers, each having its peculiar colour, and appropriate character. And happy

will it be for us as a nation, when we endeavour to forget ourselves as privileged citizens, and opinionative sects !

But no; this will not do. We think only of ourselves. We think all the world must consult our interests. We throw difficulties in the way of the public estimation, in regard to others. While urging our own pleas, we throw out false insinuations, illiberal conceits, odious oppressive names against people, as good and as wise as, perhaps, wiser and better than, ourselves. We forget the politics of all times, and all countries; and, shall we make our claims on the English Constitution? Shall we be clamorous about civil and religious liberty? a civil and religious liberty, in which we allow not our fellow-citizens to share?

Whence arise our principal errors in politics? Not from indifference to musty charters, to political folios, to our ancient manuscripts, and ecclesiastical laws! No. Justly obsolete, as many of them are, and happily unknown, let them sleep! Do they not spring from our immoderate self-love? Do we not aspire after undue ascendancies

and influence? Do we not all “seek gain from our *own* quarter?”

Whence arise these our principal political errors? Not from the holding of particular speculations on theology in private, conscientious reverence, but in our thrusting them into our civil code; not from promoting our religious tenets by our public professions, or social discussions, but by countenancing in our practice, some religious ascendancies\* in the state; not by a self-consecration to some favourite form of worship, but by conceiving ourselves more rightly set apart for public confidence and trust, than our fellow-citizens; saying to these *out-door citizens*, “stand by yourselves, for we are *holier*† than you;” not

\* The reader is referred for the more comprehensive meaning of this word to an excellent passage in the Posthumous Works of Mr. Burke, as quoted in the Morning Chronicle, October 28, 1812.

† I use the word merely in the sense of *more rightly set apart*, which is as applicable to political, as religious purposes. There is a judicious exposition of this word in Mons. Saurin’s Sermon on the HOLINESS of God.—Kadash in *certum* usum (generaliter) præparari et destinari. *Robertson’s Thesaurus*.



by the making of laws and credenda for churches and congregations, but by illiberalizing, and dictating to, the civil power.

In using the word *ascendancy* in the preceding paragraph, the writer does not allude, exclusively, to the claims of any particular sect, nor to a particular question, lately agitated\*; but to all religious ascendancies, to every orthodox, and heterodox self-exaltation to the injury of our fellow-citizens. Catholic, Protestant-Episcopalian, and Presbyterian, has each had ascendancy in his turn, and each been intolerant. And so far they should be called rather *factions*

\* It may be observed (p. 110 of these Letters) that language sufficiently respectful was used towards a great personage, when the writer spake on a particular question.

There is a period in our Constitution, at which, though the executive power has the ensigns of majesty, it is, for a season, without its authorities and dignities. It is a season favourable to the revisal of state-measures, when the maladies of a nation should be healed, and its defects supplied. That period is, probably, not far off: when it arrives, may government be directed by wisdom, and the supreme magistrate know his true interest and proper obligations! If experience were our rule, we ought by this time to have got a little wisdom.

than *religions*,—at least, if Chillingsworth's\* maxim be received, that where “Persecution begins, Religion ends.” The *pious* Cranmer must burn heretics, notwithstanding the remonstrances, and tears, of good young Edward†: Cardinal Pole, all *meekness* and *mildness*, (so he is described by his biographers), must write cruel and bitter reproaches in a Letter‡ to the *devoted* Cranmer, who is to be burnt in his turn; and, during the long Parliament, a Presbyterian (Presbyterians had cried out against the intolerancy of prelates) must write truly *against Toleration*§. And hence some have inferred, it is to be hoped somewhat too hastily, that all sects would, in their turn,

\* Religion of Protestants.

† Burnet's Hist. of Reformation, Part 2d.

‡ This Letter is not mentioned by Ludovico Beccatelli, the author of Cardinal Pole's Life,—but is printed by Quirini, who had sufficient zeal in favour of Cardinal Pole. See Pye's Notes to Beccatelli's Translation of Cardinal Pole's Life.

§ Reasons, &c. by Thomas Edwards, London, 1641. See also a Serm. May, 1703, Edinburgh, by Mr. Meldrum: reprinted in London, 1705, *against Toleration*; Meldrum was *Moderator of the General Assembly*.

be intolerant, if they were placed in power. But the true national politics would be to let no sect have power, or ascendancies : and can we help wishing that governments, at least, would set them a better example ? That they would teach private Christians, and private citizens, a feeling at once generous and natural ; a tone of language mild and insinuating ; a conduct liberal and *properly* civilized ; in a word, that they would set them the example, *to love one another*\* ?

In addition to the reason, already alluded to, for republishing these Essays, one or two others may be mentioned. The writer wished a few persons to consider them as a pledge, that, however employed, he is not likely to take a course, incompatible with the principles of civil and religious liberty : he also allowed himself to believe, they

\* It is well said by Sir John Fortescue, to Prince Edward, (son of Henry VI.) *Qualiter si fecerint Rectores orbis, mundus iste ampliori, quam jam est, justitia regetur, quibus, si tu, ut jam hortor, facias, exemplum non minimum ministrabis.* De Laudibus Ll. Angliæ, cap. 6.

would not be unacceptable to a few friends, engaged in similar studies, or interested in the object of them, the advancement of the rights of mankind : but most he wished them to be a memento to himself ; from the picture painted in his own mind he was desirous of forming an exemplar to his own conduct. Hoc illud est præcipue in cognitione rerum salubre ac frugiferum, omnis te exempli documenta, in illustri posita monumento, intueri : inde tibi tuæq ; reipublicæ, quod imitere, capias ; inde fædum inceptu, fædum exitu, quod vites.\*

He must beg leave to subjoin one more word, viz. That it is desirable in all inquiries to gain any thing on antiquity ; this is said in allusion to what is observed by some moderns, as more largely unfolded in the following pages, on the word *Constitutions*. Its sense in ancient authors is there given, and it is used in a similar sense by our old English writers. Our lawyers understand by it, statutes,† which

\* Livii Hist. sub init.

† Statuta, quæ et CONSTITUTIONES appellantur. Fortescue de Laud. Ll. Ang. cap. 15.

does not come up to its more comprehensive modern acceptation. This remark is introduced here for the purpose of adding what was omitted in its proper place; That for the words which seemed to speak his meaning most happily, he is indebted to a Jewish writer\*, though a direction somewhat new is given the words in the applying of them to, *Political Constitutions*.

\* Maimonides calls his own Expositiones, Constitutiones, as Vorstius translates the word Halechoth; the Fundamentals of the Law, Fundamenta Legis; the great Fundamental of all, Fundamentum Fundamentaliorum, the Fundamental of Fundamentals. Maimon. de Fund. Leg. cap. 1.



## Preface

TO THE THIRD EDITION.

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AS the few following pages can lay no claim to the public notice, from any testimony, so far as the Author knows, to the former Editions, in the existing periodical publications, or commendatory quotations in newspapers, it may not be improper to state the reasons, which have occasioned the following republication.

Public praise, to those, whose ears are accustomed to it, is the earnest of fame ; and love of fame, like a poetical charm, is a stimulus to new endeavours.

Das aliquid famæ, quæ carmine gratior aurem,  
Occupat humanam ?

HOR.

And where writers are sure of praise, they may calculate, without any danger of a

mistake, on the success of their new editions.

The Author, however, is possessed of some testimonies, which are encouraging, ample enough for the fondness of a parent's hopes, that his little offspring does not altogether deserve to die. A man's own conscience, the only proper witness of his motives, or assiduity, can have no force with any one but himself; but the judgment of men of upright intentions, and thoroughly conversant in the subjects treated of, may be allowed to have some force with others: for though the self-love of authors is proverbial, and there is no class of men, of whom it may with more propriety be said, "they stand too near to see themselves," yet the views of men of superior learning, eminent in their profession, and particularly distinguished, as their valuable publications sufficiently testify, for their knowledge in our Laws and Constitutional History, the views of such men are made at a distance, and may be expected to be taken *without partiality and without hypocrisy*. The approbation, therefore, of such men,



expressed as it has been, with much warmth, either by Letter, or personal interviews, could not fail to be grateful and animating; though, where no authority was given to mention persons, it would not be justifiable to do so, nor as they might not assent to every particular opinion stated here, would it be proper. The writer, however, does think himself justified in availing himself of their authority so far, as to hope, that what could, *in general*, approve itself to men of such discernment and knowledge, may contain a few hints that will not be unacceptable to some other readers. These considerations, further enforced by the solicitations of several persons to possess copies of these Letters—the former edition being out of print—are the reasons, which he has for venturing on a new edition.

Another inducement was found in the pursuits, which at present principally engage him. The former edition of these Letters was proffered as a pledge, that, however occupied, he was not likely to

shew hostility to the English Constitution, nor to play at cross purposes with the principles of civil and religious liberty. That pledge, it is hoped, has been redeemed: and this republication is offered as a similar pledge, that in the further prosecution of a work, in which he has been for several years engaged, he may be expected to keep the same course; and, by shewing a decent respect to eminent men of all parties, to follow the line of what he conceives to be the true English character.

Perhaps there was a reason stronger, than even these. Our political hemisphere is at present overspread with an awful cloud, arising, in part, from a long war; in part from present distress, and the restraints of power. The circumstances of the war, and public distress, would offer too much matter for present consideration; the restraints of government is the only topic which belongs to this place.

It may be thought, and undoubtedly is, by some, that restraints, in the present state of things, became necessary; by

others, that they were only *intended* to be temporary ; and by others, that what is unnatural and violent *cannot* last long, concluding with Tacitus, *nunquam fidam esse potentiam, quæ nimia est* ; a truth more generally seen, where that power has been openly seized and wantonly exercised by a single person. For an overgrown tyrant, may suddenly burst asunder by his own grossness, and is often dispatched in despotic governments, without much either of violence or tumult, by a private hand ; while all around, having perceived and felt the oppressor, congratulate the deliverer, and triumph at the downfall of the tyrant. “ He, who smote the people in wrath, with a continual stroke ; he that ruled the nations in anger, is persecuted and none hindereth. The whole earth is at rest, and is quiet ; they break forth into singing. Yea, the fir trees rejoice at thee, and the cedars of Lebanon, saying, since thou art laid down, no feller is come up against us.” *Isas.* xiv. 6, 7, 8. But experience shews, that the conclusion is too peremptory and

precarious, when applied to laws : for laws, however made, become precedents to those in authority, and to the people a rule of obedience. If hastily made, they may not be so hastily repealed ; if obtained only with one view, and under one pretence, openly avowed, they may be pervaded by a secret spirit, different from that in which they were ostensibly set forth, and directed to an object different from what they were originally intended : and, though even procured surreptitiously at first, they may obtain veneration from time, and sacredness from custom. The evils introduced by one race of statesmen may require a new race to remove : ages may thus roll on, centuries of oppression following a few years of corruption and bad legislation. For a new race of statesmen may not suddenly spring up, like the armed men from the teeth, sown in the earth, of the serpent destroyed by Cadmus :

Mox humeri, pectusq. onerataq. brachia telis,  
Existunt; crescitq. seges clypeata Virorum.

*Ovid Metamorph. l. iii. 1.*

It is humiliating to contemplate what has often been the course of events in such a state of things, wherein a few plausible maxims have been mixed up with many depraved principles; how love of ease, under a plea of prudence, insensibly reconciled itself to the yoke of oppression; how self-interest, pleading state-expediency, took the cameleon hue of every plant on which it was accustomed to feed; how simplicity and love of truth, taught the fruitlessness of opposition, were lost amid the glitter of distinctions, and accommodations to fashion; how state-policy, mistaking its own shifts and tricks for wisdom, delivered out its cabala for oracles; singularity became a crime, intolerance a virtue; genius and eloquence, from too much modesty, or too little principle, became advocates for imbecility of talent, and palpable contradictions; while piety, too credulous, made a duty of subjection; and hypocrisy, growing less scrupulous, did not think it necessary even to wear a mask.

This is sometimes the effect of bad laws; and has been so even in our own country; may it not be of our own times! and could a spirit of prophecy influence future events, it most certainly would not be. But should such laws fix their baleful roots in British soil, and that question now at issue, between a Parliamentary Reform and a strong military\* govern-

\* The *evils* of a large standing army, in time of peace, are;—it demoralizes and uncitizens a great number of men, who might be usefully employed in agriculture and manufactures; it is a serious expense to the nation; and it endangers the public liberty: and, as not being often, if ever, *necessary*, from our insular situation, were our fleet kept in good order, and a national militia regulated and well disciplined.

It may be considered an evil too, which may, like a gangrene, spread, till it ends in a mortification. From the time the Romans left this island to that of Richard II. we were much of a fighting people in Britain. He raised 4000 archers; but he was dethroned in the issue. The authors of *the History of a Standing Army in England*, published in 1697, are said to have been not quite correct in all their statements: but there was at least *little* or *no* standing army in England from Richard II. till the reign of Charles II. He had

ment, terminate in favour of the latter, we must then know our own place; we

an establishment, in England and Ireland, horse and foot, of only 14,750 men, and every one knows what use he made of it.—In King William's time his army in England and Ireland was increased to 49,630; and in Scotland he had 4769: and no one attempts to accuse the aforesaid authors of a mistatement in those particulars. At present (May 1817) we have a standing army of, in all, here and abroad, horse and foot, 142,000.

What are then the *advantages* of a standing army in ENGLAND? for advantages it is said to possess.

Perhaps in a *splendid* government like that of England, a small *corps de guard* may be considered, like other paraphernalia of office, as a comely appendage to the state of the supreme magistrate—*perhaps*, is added to this seeming concession, from a recollection of the dangers which often attach to precedents; and of a memorable reply of Queen Elizabeth (whose reign has been called, by eminence, the *splendid reign of the Virgin Queen*) to a foreigner, who once asked her, “Where are your Majesty's guards?” Turning to the people, as they passed, she answered, “These are my guards;” recollecting too a fact, not to be overlooked, that, as the authors of the History of Standing Armies in England observes, guards were unknown to our constitution till the time of Charles the Second.

“*Perhaps*, as other Christian states now keep large

shall have little left us but silent obedience, except reasonings, which may not

“ standing armies, and in times of peace, it may be  
“ expedient and necessary that England also should  
“ not be without one.” Here man is considered as a fighting animal, thriving and even living, by a sort of necessity of nature, like other animals that feed on their fellow-creatures; and, that while one Christian state may be *prepared* to devour us, we should be *prepared* to devour them; and that, an overgrowing population being thus mowed down, room is left for a new race. This appears to be a frightful picture of man; and others, for the present, are left to determine, whether it is true. In the mean time, a caution is added also to *these* seeming concessions; for England defended itself without a standing army, when other Christian states possessed one: Christianity, too, denounces war altogether; and whether a nation, avowing so pure a form of religion, should follow the practice of Christendom before the precepts of Christianity may deserve some people’s Christian consideration.—An island might be pointed to, where the inhabitants were living in peace and friendship, till they were taught by Christians the use of arms. They are now cutting one another’s throats. They were living too as a free state, yet, under the government of a king: we shall soon hear, that one party has *enslaved* the other.

A standing army, in short, can at no time serve the cause of liberty much, so far as the internal police of a nation is concerned. It is in the nature of a great mili-



be heard, and oppositions which, perhaps, may be dangerous.

tary force to perpetuate a despotic government; but to be a bad judge, in the cause of freedom: thus a despotism continues for ages, though many governing despots, in the interim, are destroyed by their own soldiers. On the other hand, the army, which ruled during the Civil Wars, and professed the cause of liberty, could not settle a government on its principles. It changed the form no less than ten times\*; and after all, General Monk, who had been on the side of the Parliament, terminated the whole by bringing in a tyrant. Behold then the nature and principle of a military government! The fact is, that a government by force, and a free government, are extremes, and absolute contradictions.

The Author of *Reflections on the Short History of Standing Armies*, and the Author of a *Reply* to the said *Short History*, have enumerated the reasons for the continuance of a large standing army, under King William. These reasons, at least, do not now exist: “but *others do* :” *perhaps* there may, and greater.

“England, it may be said, is not capable of defending herself from foes without, and from the disaffected within, without a large standing army.” Yet England defended herself without a standing army for nearly a thousand years. Perhaps she might be able to do so still.

Here some readers may naturally enough call to

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\* Hobbes's *Behemoth*.

PERHAPS, *may be*.—For it does not follow, though *tumultuous* meetings may be

mind the ancient *division* of the *English nation* into *hundreds* and *tithings*; and how admirably our *free general militia*, acting by a well-regulated rotation, was formed, for the purpose both of national defence against foreign enemies, and of a domestic police, in aid of the civil magistrate. Without going into the particulars of this incomparable discipline, so agreeable to the ancient common law, and therefore so congenial to the Constitution of England, it may be sufficient to refer readers to Mr. Granville Sharp's very able Tracts on this important subject.

“ This state of things no longer exists.” — But do not the same means, and the same powers exist? And as the same common law exists, might not there be given to the same means and the same powers, and even without difficulty, a true, constitutional effect?

Supposing the old system, however excellent, not to be revived, still we have a *militia*; and there is no danger in believing that according to the present attitude of Europe, England will never be without, at least, a small standing army. In this case, if we choose to call our militia, in its present condition, a raw, undisciplined body of men, will it follow, that they need continue so? The militia regiments might be so trained by officers of the regular army, as to be made every way effective, as well for the purpose of opposing invasion, as of domestic police and security.

suppressed, that the means of petitioning for a Reform in Parliament, which is so essentially required, may be easily effected: they may still remain; and perhaps

If it be said, that the people are not to be trusted with arms, it must be supposed that a good understanding does not subsist between the Government and the people: and on *this* ground it is that the expediency of a Reform in Parliament is urged; for unless a good understanding should be made to exist between Constituents and Representatives, mutual confidence will be destroyed; and the interest of the governors and governed not being the same, a nation cannot be happy: it will be governed against its own will, by force; and whether a government by *force* is free or a despotic government, shall be left for other people to reflect on.

The subject of a standing army will be considered, more *generally*, in the proper place. In the mean time, readers will please to take notice—that what has been hitherto said is spoken *more particularly*, in reference to governing a nation *in time of peace* by an army, to prevent a Reform in Parliament; and—that “the present militia” is the *constitutional* security, “which our *laws* have provided for the public peace, “and for protecting the realm against foreign or domestic violence\*.”

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\* Blackstone.

such means may be devised as no magistrates can overrule, no legislature could either attempt, or even wish, to suppress, and as the people, with the most perfect safety might pursue;—such as might be promoted throughout the United Kingdom, and legally, without three persons meeting in any part of it; such, too, as by moderation, yet with firmness, with good order, yet with perseverance, might succeed, better than *tumultuous* assembling, or any violence of opposition.

But under the worst state of things, “the mind (of every honest man) would be its own place.” Sedition bills, and Attorney Generals cannot enter there. His thought will be free, and his own conscience must be his altar of gold, “the altar of gold for the incense before the ark of the testimony:” and as we may behold what is good, when not able to attain it, so we may feel what is right, though obliged to yield to what is wrong: it is both useful, too, and salutary; for such feeling may not only be delectable in itself, but, by be-

coming a principle and a passion, be rendered favourable to virtue of character, and sentiments of honour; and, as a consequence, influential on private happiness; for there may be a sunshine of the soul, when all without is clouds and darkness; and there is an elegant observation of the French Protestant Reformer, John Claude, to this purport, that in fine weather the bees fly at large, and collect their stores from a variety of sweet flowers; but when it is stormy, they keep close together in their cells, and feed on their honey.

With some such feelings as these, a new edition of the Four Letters on the English Constitution is put forth. Should the Sedition Bills, further enforced by the Suspension of the Habeas Corpus Act, and a strong military force, not have a totally deleterious effect, in effacing from us the remembrance of good principles, they may have a narcotic influence, in creating a slumber over them, and, at length, an indifference to them. This indifference, however, can never become general among Englishmen. Many will still be found

who will continue to make a conscience of their principles: they will not, they cannot “bow the knee to Baal.” On all proper occasions, they will be advocates for a reform; they will keep their foot unshaken on that sacred spot, of faithful testimony and honourable dissent. They will always consider a strong military force in time of peace as a badge of slavery, as incompatible with the commerce of a country, as it is with its liberties; an innovation totally irreconcilable with the theory of their constitution, and the practice of their ancestors.

The present pamphlet, it is hoped, will have its proper force in such breasts. In England it may be reasonably hoped, that the principles of liberty will never be wholly unpopular; but should they become so, they will not therefore be the less just and true: and there will always be a cloud of witnesses gone before, to whom it may be well for those to look who come after. Such persons, as the author has now more immediately in his thoughts, will have to contemplate friends and parents,

who were persons of real worth, and they need only aspire to be as blameless in their lives as they were; who, however differently they might think on any speculative points of religion, had but one rallying point in politics, and that was—liberty—and they will have to recollect, that they are followers not of men who sacrificed their principles to vanity, ambition, or a desire to obtain greatness and affluence for themselves or their families, but of those who were willing to forego and to deny themselves much, to preserve a good conscience, and who thought it “noble to stand upright when the world declined.”





## ESSAY I.

### ON OPINIONS RESPECTING THE ENGLISH CONSTITUTION.

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**I**N some sort of connection with the Essay on the Defects and Abuses of Public Charities\*, it will be allowed me, perhaps, to consider the Defects of our Political Constitution. But I mean to take no stoical, or misanthropical, view of the subject. If I shall point out the defects of our system, I shall first state its principles; and if I shall mark its secret or open corruptions, I shall willingly dwell on its superior pretensions, and acknowledged advantages.

After all said on public charities, experience forbids us to speak of them as a good criterion of public or private virtue. A constitution and government might, indeed, be so happily disposed,

\* This Letter, in No. I. of the Reflector, does not appear in this series.

as that knowledge might be more widely circulated, and motives to industry more happily induced; while, at the same time, so much natural feeling, so much salutary conviction, so much moral principle, so much of an honourable spirit of independence, might be promoted through a country, that public charities would be less necessary. A state of society, perhaps, might not only be conceived, but even described, in which public charities would be considered almost as an evil and disgrace.

But, when we speak of an existing state of society, it may be prudent to keep sometimes out of the world of possibilities. In the removal of a positive grievance under a present system, we may do real good, though it may be small,—it may become greater in happier times, and under more auspicious circumstances.—It is most pleasing to take, occasionally, a poetical flight to Utopia; but we must descend and dwell with the people, amidst whom we are born, or among whom we are destined to live. When speaking, then, of political forms, let us leave others to talk of perfect models; let us renounce theories and appeal to facts; let us feel for substance, and permit the insane, and the selfish, to talk of acrial forms, and vanishing points.

It should at first seem, that the question,—

What is the political constitution of a country? is of all questions the most easy of solution; a constitution of principles, forms and laws, being the most prominent feature in its policy, to be seen and felt, we should suppose, in every day's experience, as we perceive our own powers in the movement and regimen of our natural bodies. Yet in governments do circumstances often arise, by which the question is perplexed, and what ought to be visible and clear, is thrown in the back ground, or kept wholly out of sight.

One might think, that the question, as it relates to a country in which we live, could still less be liable to ambiguity or uncertainty. Yet circumstances have arisen in our history, which have rendered it peculiarly so with us. Hence some of our historians have been called constitutional, others unconstitutional, writers. From such books, as *Nicholson's Historical Library*, and such collections of papers, as those made by Sir Robert Cotton, Archbishop Parker, and others, and the Reports lately made of the Public Records of the Kingdom, one might conclude, there is no country, that possesses so many constitutional writings as England;—perhaps, we should think justly;—and yet do *Rushworth's Collections*, by exhibiting the eloquence and reasonings of the most able men in the country,

shew, how, in critical points, and trying periods, they reasoned very differently on constitutional principles. And Andrew Horne, the author of the *Mirroir des Justices*, one of our oldest writers on the Law, shews, in his chapter *de Abusion*, that in the earliest times, the common law was liable to be abused; and, that as *Magna Charta* yet had some faults, so also had it in some points been misconceived and abused.

We have at present three predominant parties in the country (if I may be permitted to use a word without any invidious meaning), I mean, classes of politicians, who cannot be induced to make their particular interests and claims one common stock. Yet they all talk of rallying round the Constitution, like different religious sects, who all appeal to the same code. Will it be said, that in the eye of all the three, the principles of the English Constitution are the same?—that the dispute wholly turns on the moderation or excess of its government?—on the qualities, good or bad, of the administration? Or, shall we say, it is effected by the selfishness, the pride, or ambition of either party, or of all the parties at once? If there were three hundred parties in England, what is the presumption, that they would not all rally about the English Constitution?

The question, What are the principles of the English Constitution? is receiving an answer, true or false, in the practice of every day; in the symbols and forms of executive power; in the modes, and principles, of debate in both houses of parliament; in the language of our courts of law; and in the silent homage, either hypocritical or sincere, at least, the obedience of private life; it will be, perhaps, then, safe to admit, that the difficulties, the principal difficulties, in the way of this question, are, some latent faults in the Constitution, which few are willing to admit, or in abuse and corruption, which no one is willing to abandon.

Over and above the answer of every day, there arise periods, when the question returns with peculiar force; when all parties are set on the alert; when the press labours; when every public meeting, every private club, every company, every family, resounds with the question proposed, and answered.

In our own time we have had three such periods; one, when we were setting on foot the war with America; another, when we engaged in the present war with France; and a third, at the present moment,—when, alas! we seem at war among ourselves.

Prior to the period of their war with this coun-

try, the Americans spake favourably of English liberty. The political constitutions of their several states were much framed after the English model ; their arrangement of the three powers, in their political body, was regulated somewhat after the English form ; their trial by jury, and their system of representation, were English : our best political writers, Milton, Harrington, Sidney, and Locke, were their great favourites ; Penn, and Lord Baltimore, the founder of Maryland, were both Englishmen ; and the former, in some respects, the best of political writers, spake the high language, and breathed the purest spirit, of English liberty. In one word, with the exception of our limited toleration, against which Penn pleaded so ardently in England,—of the expences of our government,—of our hereditary claims and privileged orders,—with these exceptions, the Americans spake highly of the English Constitution.

When we proceeded to tax the Americans without their consent, and to make a monopoly of their trade, they made a stand, and altered their tone. This they execrated as an encroachment on their liberty, and inconsistent with the principles of the English Constitution ; and some writers in our own country, particularly Dr. Price, in his *Observations on Civil Liberty*\*, examined

\* Part II. Sect. 2.

the American war by the same rule. Now it was, that the boldest of the American writers, the author of *Common Sense*, advanced a step higher,—he spake the language of contempt on our Constitution, as a house divided against itself : still he expressed himself of its distinction *in a constitutional sense*, (by which he meant the *Constitution of the people*, or the *republican part of the Constitution*;) and of its constitutional errors ; and the Americans, he considered, as having a prejudice in favour of the English Constitution.

A second period, when the question concerning the English Constitution became much agitated, commenced with the Revolution of France. That event gave an unusual interest to the question. A new epoch seemed to be forming. Long habituated to contemplate the constitutions of the American states, and then of Poland and France, as visible and tangible masses, generated, as it were, on the spot, and shaped within a limited period, the writer alluded to was not satisfied with abuse ; he went farther ; he roundly asserted in his *Rights of Man*, that we had no Constitution at all.

A third period we venture to pronounce this, in which we now move. The Whigs and Tories,

as they are called, and the third class, who will allow themselves to be called neither Whigs nor Tories, are in the constant habit of using the same or similar language. In the act of exercising, certainly, a great power, the House of Commons talked as being under constitutional protection (I allude to the case of Sir Francis Burdett), and Sir Francis pleaded, in vindication of his resistance, the violation of the principles of the Constitution. A House of Commons, they all allowed, was a true form of English polity,—that it must possess privileges; but we saw them differing in their opinion on the extent of those privileges. Those, however, the most determined against Reform, in both houses, were for rallying round the Constitution; and Sir Francis Burdett, so ardent for Reform, spake nothing so loudly, as that he and his friends required nothing but the Constitution.

There are other periods, which are frequently recurring, when this question is wont to be agitated, viz. When men choose their representatives in parliament. These periods, indeed, are peculiarly favourable to the discussion, except, perhaps, that a knowledge of the principles of the Constitution ought, in the natural course of things, to take precedence of the exercise of the



elective franchise. However, such periods naturally excite the public attention to this important and interesting question.

As we have had these several periods, when the question became peculiarly interesting, we may be said to have several classes of writers, who have taken somewhat different measures in discussing it.

The first is of those, who, in pleading against the advocates of arbitrary power, have adopted a mode at once direct, and insinuating; direct, because they appeal to first principles, and reasonings, from analogies in nature,—the best and most philosophical way of examining the subject,—though it requires too profound a turn of thinking for an ordinary genius. Of this description was Montesquieu, who, in his *Spirit of Laws*, professedly examines the English Constitution; and Mr. David Williams, who, by way of comment on Montesquieu, wrote a *Treatise on Political Principles*. Hooker, whether truly or not, I do not inquire, lays the foundation of the laws of ecclesiastical polity, in reference to England, on reasonings from analogy;\* and Locke's general properties of law, in his *Treatises on Government*,

\* The *eighth* book (though published in an imperfect state) compared with his *first* book, “*of the Lawes of Ecclesiastical Politie.*”

have a view to the English Constitution. The mode of reasoning more insinuating, is that, which appeals to facts in our own history, as it appeals to the pride of a great nation. Of this character were Sir Robert Cotton and Sir Henry Spelman, Milton and Sidney, who as antiquaries and historians, illustrate the principles of the English Constitution.

Some writers, whom I call the second class, have thought this way of reasoning too general. Advocates of the same cause, they admit the principles to be metaphysically accurate, the facts historically true. But, in their judgment, these principles cannot be so systematically arranged, nor those facts rendered so producible, consolidated, as it were, into any plan of premeditated contrivance, and permanent strength, as to form, what might be called, the regular features, and connected parts, of a well organized body : or, if an organized body, that, like animal bodies, it has received its nourishment, support, and compactness, from a variety of substances. They allow, that we have a Constitution, and that it is excellent ; but they speak of it as not to be traced to any particular era, nor to any systematic philosophical plan of principle. They trace it to an heterogeneous mixture of causes and effects, of principles and facts, of opposite powers, and

biases, inclining different ways—each struggling in its turn for victory, and reposing, at length, in peace ; in short, as rising out of jarring interests, of lucky contingencies, and auspicious alliances. Montesquieu himself talks of the English Constitution as formed in this manner, and Bishop Hurd follows his track, in his *Dialogues on the English Government*. What Montesquieu says of our Constitution in reference to a Saxon origin, the writers alluded to affirm, metaphorically, in reference to the uncertain origin, and perturbed progress, of our Constitution ; “That it was formed in the woods.”

Those writers have been followed by others. They perceived, that writers of opposite interests maintained the same opinions, and appealed to the same facts ; and that men, who had the same leading views, and, sometimes, the same particular interests, were often divided in the application of their common principles. They triumphed : *Where did your Constitution begin ?* and, *Where are the principles laid down ?* They thought the country not prepared to give a clear and direct answer ; and hence they inferred, as we have seen, that England had no Constitution at all.

My limits will not allow me to enter on minute distinctions, nor long discussions, now. But I propose in a future paper, to state briefly what I

conceive to be the fundamental principles of the English Constitution, and to propose a plan for the readiest diffusion of its principles, an expedient at all times necessary, and perhaps never more so than now. I cannot, however, be supposed to have made any new discoveries. The subject has been discussed a thousand and a thousand times : and the plan being constitutional, will possess nothing, that has not been tried at different periods before. Circumstances, however, may awaken contrivance, and returning evils may incline us to inquire after our natural remedies. In adopting the language, What are the fundamental principles of the British Constitution ? I adopt a language, which I think liable to no ambiguity, and which keeps free of the forwardness of party. For, though among all of us, many, I suspect, are worked up to our pitch, while we remain without feeling, or knowledge ; our length we go, but our length is not long ; we are mere hand-organs, played upon by others, who are themselves little more than automata ; or we are a piece of clock-work ; we move, indeed, and strike the hour, yet only as impelled by our private interests, and passions. But the terms, at least, are admitted into the vocabulary of all the parties in England.

## ESSAY II.

ON THE PRINCIPLES OF THE ENGLISH  
CONSTITUTION.

**W**HEN we contemplate a political constitution, we should have in view, not a baseless fabric, floating only in the imagination of a poet, but a real structure to be brought into use and practice ; imperfect, indeed, it may be, yet, in the main, durable ; and, though ruinous in part, yet habitable by man ; and a writer may, comparatively, even admire particular parts, without always overbearing his reader, like a flatterer, or false friend, with the swell of language, and the pomp of praise ; may wish to do homage to the English Constitution with its proudest panegyrists, and even to a constitution, if approved by the people, of less account ; convinced, that as a constitution really existing, ought to be a rule to an administration which exists, so also that an existing

people should be a light and a law, leading and accommodating, to their various succeeding necessities, the Constitution itself.

Many politicians ground their principles, their opinions of Constitutions, both civil and ecclesiastical, in the institutions of Moses: and, when they have applied what is excellent in them to the real service of particular commonwealths, so far from erring greatly, they have acted wisely; for some excellencies there are in this code that few, if any, nations have ever reached. It has been by identifying, as it were, one nation with another, that the greatest political errors have flowed into Christian states, and deluged common sense. Moses sets out, it is clear, *on a claim of a divine command*; and the constitution of his government, therefore, has been called theocratical: But, unless men will roundly say, that they are under the same regimen, and in the same sense as Moses said the Jews were, it is by a false logic, as well as a false religion, that they arrive at a conclusion. The divine right of kings, of bishops, of priests, of tithes, and the like, are assumptions without any premises, proceeding rather on a principle of identification, than accommodation. We need not, therefore, be very curious about the arguments of such writers: it may, however, be not improper to add, after the

learned Selden, that, while displaying a pomp of words about the Jewish manners and laws, they have often exposed their ignorance of them.\*

The basis of the Hebrew Legislature is laid in the ten commandments, *Exod. xx.* which are often repeated by Moses, as that basis; and were distinctly written by him, under that idea, on two tables; and they are often repeated by him: and in *Deut. v.* with this remarkable testimony added to them: *These words the Lord spake unto ALL THE ASSEMBLY in the mount, out of the midst of the fire, of the cloud, and the thick darkness, with a great voice, AND HE ADDED NO MORE.* Here, then, we have the *written* foundation; and our Alfred, who was both a wise and a religious prince, has prefixed them to his laws: and he has borrowed some other ideas from the Hebrew code, though, from any thing that appears, rather

\*Selden's remark primarily applies to the subject of his Treatise *de Successionibus ad Leges Ebræorum*, on which subject he shows how grossly ignorant the learned Origen himself was, even while speaking of it very triumphantly (in *Homilia xxii. ad Numeros*); but he adds more generally: *alia sunt, de sacrâ illâ republicâ, innumera, et maximi sane studiosis æstimanda, quorum latet plane veritas: nec aliter fieri potest, dum jurisprudentia ejusdem, mores, ritas, sententiæ receptæ ab ejusdem magistris ad pasteros transmissæ, negliguntur. Prolegomena ad Librum de Successionibus ad Leges Ebraorum in bona Defunctorum, et in Pontificatum.*

in a way of accommodation than identification.\*

Pity, that certain writers, so pregnant with theocratical ideas, which may more properly center in the Hebrews, would not make room for one more, which concerns all commonwealths, which is, that this very theocracy was grounded in the consent of the people! For the assembly here mentioned is nothing less than the assembly of the people, what the Talmud calls, the *synagoga magna*, the great synagogue; in short, the whole congregation of the people; for it was when all Israel were camped before the mount that Moses addressed them. “And Moses came, and called for the elders of the people, and laid before their faces all these words which the Lord commanded him. And *all the people answered together*, and said, All that the Lord hath spoken we will do. And Moses returned the words of the people unto the Lord.”—Exod. xix. 7, 8. All this was antecedently to the delivery of the ten commandments.—Ch. xx. And it is not till ch. xxiv. v. 12. that we have these remarkable words: And Jehovah said unto Moses, “Come

\* Ll. Anglo-Saxonice ecclesiasticæ et civiles, &c. Wilkins, p. 28. And in imitation of Alfred, probably, it was, that the author of the *Mirroir des Justices* began his treatise with setting down the Books of the *Old* and *New Testament*.



up to me in the mount, and be there : and I will give thee tables of stone, and the laws, and commandments (*meaning the ten commandments*) which I have written, that thou mayest teach them." Harrington knew the value of this idea, and grounds in it this great fundamental maxim, "but if all, and every one of the laws of Israel, proposed by God, were no otherwise enacted than by covenant with the people, then that only that was resolved by the people of Israel was their law ; and so the result of that commonwealth was in the people."\*

Christian assemblies were originally regulated, may I say constituted ? much after the manner of the Jewish synagogues ; this, too, both as to the names of their first officers, (*presbyters* and *deacons*) their ordinances, or sacraments (admitting proselytes by *baptism*, breaking of bread, and drinking wine, called the Lord's Supper) and ceremonies, (laying on of hands, *Χειροτονία* :) and this was all natural enough : for the first Christians had been Jews : ministers, however, very soon became masters, and the people were cyphers ; but should any one doubt whether in the first Christian assemblies their laws or regulations, their decrees or constitutions, call them

\* Oceana, first part of the Preliminary, p. 50, ed. 1700.

what we please, were settled by common consent, let them consult the Acts of the Apostles.

Yet so it was—How violent did some men soon become about faith ! yet how degenerate in their practice ! Moon-struck ideots about orthodoxy ! mere beasts on the subject of liberty ! With respect to civil matters, however, without the sanction, *the consent of the people*, there can be no commonwealth, no free state, nor a proper primitive Church\* ; nor is a state, therefore, free, because it can shew a Constitution. The former position would be a contradiction in terms ; the latter a mere hypothetical dogma.

Happy that nation which knows its true interest ! happier still if it can will what it knows ! but happiest of all, if, what it knows and wills, it by experience tries, and adapts to its particular exigency !

Yet are there any ready to affirm, that the English, through a want of precision in the time and means of the formation, and in the primary end and rule of its ordinances, are without a constitution ? Let them survey each production of nature ; let them observe, how much animal life is elicited by silent, gradual process ; what mighty organic movements are carried on by invisiblesprings ; what surprizing effects are wrought

\* εκκλησία.

by all the operations of chemistry ; effects successive and slow ; but certain, substantial, and strong. Some of the grandest productions in the universe, like those lands of Egypt, produced by the slime left from the overflowings of the Nile, have been so formed ; and so may have been, so, indeed, has been formed, be what it may, the English Constitution.

But let us not then be rivetted by the charm of words ; let us not be confined by the magic circle of theories : in the regions of common sense, let us search for facts ; where they lead let us follow ; where they leave us let us make our stand.

It is intended to illustrate this and the preceding Essay, in two hereafter to follow, by occasional references to our Anglo-Saxon laws, which began with Ethelbert in 561, the oldest northern written laws, perhaps, extant, and the Anglo-Norman laws, or those of William the Conqueror ; to the laws of Hoel DDha, or the Good, the Alfred of Wales, of the 10th century ;—and to the laws and acts of Parliament made by King James I. and his successors, kings of Scotland ;—and to four English writers of great authority, Sir Robert Cotton, Mr. Selden, Nathaniel Bacon, and Sir Henry Spelman. Let it suffice now to collect together, though but cursorily, all that may be called, not, as before observed, without some dis-

pute, the scattered parts of the British Constitution.

It does not occur to me, that the ancient writers on government and laws, Plato, Aristotle, Cicero,\* had an expression for what moderns mean by a

\* Συγκρισις and συνιστανω, are used by Plato and Aristotle; and constituere causam, leges, &c. constitutio controversiæ, civitatis, &c. by Cicero; but not in the sense of the moderns; nor yet πολιτεια, πολιτευμα, πολιτευομαι, as defined by Aristotle, which relate to laws and government, and correspond to our word, administration, and sometimes to a form of government, but not, in the sense of the moderns, to a rule to the law itself, made by common consent.

Constitutiones (Hilchoth, Heb.) de Fundamentis Legis, (the title of a famous book by Maimonides) is to be taken in a metaphysical or theological sense, rather than in a political one, and, even in that, means *the Decisions and Decrees of the Doctors* on doubtful points, excluding the people's consent, in a sense totally opposite to the modern meaning of the word, *Constitution*. Vid. Vorstii Edit. p. 133. notæ.

The words, too, used by Moses, for *Laws, Statutes, Judgments, Commandments, &c.* are generic words, and would apply to laws given by a king, or legislator, by his own authority, *without the people's consent*, as well to any other.

There is, however, one Hebrew word (Bereith, a covenant) more *specific*, and suited to our meaning, as including the *people's consent*: for a covenant supposes *two parties agreeing*, as in the case of the ancient Hebrews, there was Jeho-

vah on one side, promising “to be their God,” and “to give them the land of Canaan” for their inheritance; and on the other the people’s *engagement*, and *consent* “to be his people,” and to obey Jehovah, as their King and Legislator. Accordingly, the *Book of the Covenant*, Exod. xxiv. 7. (Sepher *Habbereith*) *written on two tables of stone*, may be considered as their *Constitution*, and was so. It was written apart from the rest,\* and was the basis of the other statutes and judgments. We find this distinction marked in several places: and hence, in Exod. xxiv. 12. “And I will give you *tables of stone*, AND *a law*, and *commandments*.”

It appears, then, that Bereith approaches nearer to the meaning of the modern word, constitution, than any used in the Greek and Roman writers. “And he *took the book of the covenant*, and read it in the audience of the people; and they said, “All that Jehovah hath said he will do, and be obedient.”—v. 7.

Here, then, was a *compact between* two parties, accompanied with the usual formalities which attended a covenant or compact, in ancient times, of a *sacrifice*.—Exod. xxiv. 5—8. For, that this was the act of *signing a covenant* between two parties, see Gen. xv. and Jer. xxxiv. It is also noted by Virgil:—

Stabant, et coesâ jungebant foedera porcâ.

ÆN. L. 8.

The *New Covenant* (for so η καινη Διαθηκη, *New Testa-*

\* Mr. Hobbes correctly observes of this; *primi et secundi generis leges in Tabulis Ligneis scriptæ, nempe Decalogus, in ipsa arca conservabantur: cæteræ, scriptæ in totius legis volumine in arcæ latere, Deut. iii. v. 26, hæ enim retentâ fide Abrahami poterant mutari, illæ non poterant.*—De Cive, Cap. xvi. 10.

*ment* in the judgment of most critics would be better translated) has a reference to the *Old Covenant*, and a correspondence with it, as including a *compact* between two parties: and, accordingly the famous Richard Baxter, who makes so many nice discriminations on the *two Covenants*, (in his *Aphorisms of Justification*) observes of the *New*; “Mere laws are enacted by sovereignty; mere covenants are entered into by equals, or persons disengaged to each other in respect of the contents of the covenants, and therefore they require *mutual* consent. Those, therefore, made by God, are of a mixt nature: neither mere laws, nor mere covenants, but both. He hath enacted his laws as our Sovereign Lord, without waiting for the *people’s consent*, and will punish the breakers, whether they consent or no; but, as it is a *covenant*, there must be a *restipulation* from the creature.”—p. 14.

It is clear, at least to my judgment, that the *discipline* of first Christian churches proceeded on those of a *covenant*, the several members acting in them with *mutual consent*, or *one mind*,\* as it is expressed. Their teachers were not their masters, but their *ministers*† or servants. They were *elected with the consent of the church*, or assembly of the people; and their whole œconomy, of praying, preaching, administering of ordinances, distributing to the necessities of the poor, and appointment of ministers or teachers, was a *fellowship*,‡ a union of persons acting on the principles of a *Covenant by mutual consent*.—See Acts, ch. i. v. 15, to the end.—Ch. vi.; Ch. xv. 22. and throughout the ACTS: and the custom of choosing their own officers, with the *consent of the*

\* Ομοθυμαδον.

† Διακοναι.

‡ κοινωνια.

constitution ; nor does Hooker give a definition of it, though we may easily make one for him from his excellent first book of *Ecclesiastical Polity* ; for he invariably and energetically refers the origin and right of public regimen to *composition and common consent* :\* even Harrington,

*whole Church*\*, continued the practice with Christians for many years. (This subject I have considered somewhat more largely in the 2d edition of, *An Inquiry into the Nature of Subscription to the 39 Articles*, p. 374.) And, accordingly, that faithful writer, Granville Sharp, considers “the Act of depriving the Clergy and People of the Right of electing their own Bishops, as among the *first innovations of Antichrist*.”—See *An Account of the Ancient Division of the English Nation into Hundreds and Tithings*.—p. 63.

The observations on Covenants and Constitutions are made primarily in the way of illustration, but, indirectly, may be used as arguments. For certain writers (Mr. Hobbes, too,†) have formed many of their arguments in support of an absolute government, that must eventually exclude the consent of the people, (however it might originate‡) from the writings called the *Old and New Testament*.

\* B. 1. 10. This approbation “they give by their own

\* Συνοδικησας πασης της εκκλησιας, *The whole church or assembly consenting*. S. Clementis, Ep. 1. ad Corinth, sect. 44.

† See Hobbes de Cive. Cap. 16. 17.

‡ Mr. Hobbes admits that the beginning of a State is in the *consent* of the majority ; but that the *power granted by the citizens is absolute*. Ibid. Cap. 5. 6.

Sidney, and Locke, are defective here, though no men better understood the fundamental laws of society. As they accord in principle, Harrington shall speak for all three: "The centre and basis of every government, (says this profound writer) is no other than the fundamental laws of the same;" and again, "as there is a private reason, which is the interest of a private man, so there is that reason, which is the interest of mankind, or the whole;" and government he calls, after Hooker, "the soul of a nation:" and what he calls the mind and will of a nation is what others mean by a constitution.

Machiavel comes near the truth, when he says: "then a city may be called free, and a state pronounce itself durable, when founded *on good laws and orders at first*, and has *not that necessity of good men to maintain it*. Of such laws and principles many ancient commonwealths were anciently constituted; and continued a good while."

Of late years the case has been different. Sometimes the word has been used with a covert meaning, and sometimes with one of open, public import. In America and France, all manner of

voice, sign, or act, and also when others do it, their name, by right at least, originally derived from 'them,' as in Parliaments, Counsels, and the like assemblies." Eccles. Pol. B. 1.



changes were rung on the word ; all manner of experiments made with Constitutions ; and in England, so common has been the word, that what should always be connected with public feeling, has at length been drawn into the vortex of private interest ; till the word has passed into a party word, if not into one of no meaning.

To come then near our own time : “ To constitute,” Dr. Johnson defines, “ to give formal existence,” “ to make any thing what it is :” and a Constitution he defines, “ an established form of government, a system of laws and customs.” According to Mr. Thomas Paine, a Constitution is a “ thing antecedent to government and laws, the political bible of a state.” “ British civil constitution,” says Mr. Robert Robinson, “ is a phrase expressive, first, of a constitution of rights, native and inherent in the inhabitants of this kingdom, and in all mankind ; next, of a body of laws peculiar to this kingdom ; and lastly, of a form of making and executing those laws, by King, Lords, and Commons.”\* This definition describes neatly what Judge Blackstone has discussed much at large ; though our lawyers are sometimes in the habit of making the body of our laws answer the purpose of a definition, as particularly Lord Fortescue in a *Preface to his Re-*

\* Political Catechism.

*corde* ; and hence among them the observation, that our constitution is in our statutes.

Major Cartwright, in similar language, defines the British Constitution, “ a form of polity, by which the nation has consented to be governed, including a legislature of King, Lords, and Commons, and real representatives of the Commons, as well as trial by jury, together with those principles, on which justice and liberty depend.”

But the British Constitution,—though, as will hereafter appear, I do not wish to concede to the Church any undue weight or influence,—should be also considered in its extended sense, *as a constitution in church and state*\*. The people of *England and the Church of England*, according to our professed advocates for the ecclesiastical establishment, Hooker and Warburton, “ are one and the same people ;” an inaccurate idea, *as a fact*, though not more so than some things advanced about the civil constitution : but it has given birth to another definition of the English Constitution ; according to which, “ civil and ecclesiastical polity is described as a strong arch of government rising from different foundations, but bending towards each other as they rise, and meeting in the centre ;” a definition of Mr. Ro-

\* See the beginning of the Postscript.

therham's, a writer *on establishments*; and, accordingly, some have represented the English Constitution consisting of a king and three estates, under the similitude of an equilateral triangle, that is, a triangle of three equal sides, with a crown at the top.

In the describing of this Constitution, the word *fundamental*, which occasionally will be used, is of great concern; it must, at least be understood on all those occasions to possess a meaning significant and full. A power may be admitted into a government, which is yet not essential and fundamental in the Constitution. Some have written, as if thinking, that the Church of England was an *essential* part of the English Constitution, according to the idea just laid down; and from hasty opinions on the claims of an established church, they have proceeded in a way, both towards Catholics, and Protestant-Dissenters, erroneous in true policy, and full of prejudices and mistakes. This, at least, we should never forget, that, if the Church of England is fundamental, because it is established, so must have been the Romish Church long before, the rights of which are provided for by Magna Charta. The English government should protect both alike; it should protect all, as a shield to the weak, not as a sword to the

strong. As to the fundamentals, or the first principles of its constitution, they existed before either the Protestant or the Catholic religion was established here ; nor is either essential to the Constitution, though both have been occasionally introduced, and though both obtained the supreme sanction of the laws. The inhabitants of this island were Papists, before they were Protestants ; before they were Papists, they were Christians, and had churches ; and before they were Christians, they were Britons, and had a Constitution : just as to a building something may be added, which entered not into the original composition of the fabric\*.

\* Concerning the state of things before Christianity, see Gildas de Excidio Brit. and Bede (Hist. Eccles. lib. ii.) and Spelmanni Concil. Brit. tom. i. But we have no guide in ascertaining the wars and civil distractions between the Saxons and Britons, but the Saxon Chronicle : in Gildas, there is little more than a doleful lamentation, in obscure style, on the depraved state of the Britons, in his time. Bede's History is the only one that is to be considered as giving any account of the Britons and Saxons, in a way of narrative, and that strangely mixt up with the idlest legends, and false miracles : the latter part is barren of every thing, and, besides, not to be reconciled to the Saxon Chronicle. " In Gilda, in Beda, frustra illorum Historia quæritur : ita ut Chronico Saxonico debeamus, quod aliqua illorum temporum notitia ad nostram ætatem pervenerit." Prefat. ad Chron. Saxon. Gibson. The

The truth on this subject is, that as we had a constitution, or fundamental rules for government, in this island before any Christian church existed among us, we should continue to have one, were no Christian church to remain. It is the province of constitutions, to be the guardians and friends of all the community alike,—to be able to answer all the varying wants of place and time, such more particularly as arise from religion, in the same manner as we vary our dress, when we advance in years, or as the skin distends, and is strengthened, with the growth of our bodies.

As fundamentals should be a rule to laws, so may laws be made quite contrary to fundamentals, and that are a violation of a constitution: as in architecture one part of a building may not harmonize with another, or as a picture may be so disposed in its parts, as to have no *repose*. Trial by a jury of our peers must be allowed, and is allowed by all, however, and whenever first acquired, to be a fundamental now in the English Constitution. The privileges of either house of parliament, whatever may be said for or against subsequent Monkish writers contain little more, than what they gleaned from Bede and the Saxon Chronicle, except what they superadded of their own inventions: in *these* they are sometimes not unfertile, but they are of little authority. We must, therefore, be contented with seizing the general features of the characters of those times.

their existence, depend on, at least should harmonize with, the common law, or statute law. Precedents may certainly, in the question about privileges, be produced on one side giving sanction to a claim, and on the other, destroying that claim. This has lately been done. How, then, shall we settle the dispute? The proper way, is, to refer it to fundamentals, as laws themselves are, according to the principle of Chap. II. of the Confirmation of the Charters of the Liberties of England and of the Forest, made in the 35th year of Edward I.—“ And we will, that if any judgment be given from henceforth contrary to the points of the charters aforesaid, it shall be undone and holden for nought.”

Precedents, if bad, are the cobwebs in a temple, which should be swept away; laws, injurious or unmeaning, the cabala of superstitious and dark ages, the lumber of the place, over which people are liable to stumble and fall, should be repealed or set aside; but fundamentals are the sacred fire, which should be left always burning on the altar.

Fundamentals in a constitution are a rule for governments, and influential in the whole political system. Statutes, too, sanctioned, and repeatedly confirmed, on constitutional principles, gradually become a part of the constitution itself.

A fundamental is, in short, the sap which springs from the root, rises in the trunk, and is transfused through all the ramifications of the tree ; the vital principle, which, in animal life, flows in the blood, and operates on all the humours and muscles, the solids and veins ; the basis, and buttresses, and rafters, on which the building is raised, or from which it derives all its consistency and strength. It is on this subject I consider William Penn as having written so well.

In speaking of a human body, we say, a man is of a good or bad constitution, in reference to that temperature, which has a tendency to preserve health, and vigour, or which inclines to feebleness, disease, and sickness ; though a good constitution may be impaired by sloth, and ruined by intemperance ; while a bad one may be improved by exercise, and invigorated by sobriety and good regimen :—the same in a political constitution of a nation.

To be more particular. As men, we have a natural claim to existence, to liberty, to religion, to whatever comes under the denomination of personal rights ; as members of a civil society, to frame the laws by which those rights are to be administered, and to share the power, by which those laws are made : and on these principles are grounded, as we have just now observed, our

present claims to parliaments and juries, the proudest and paramount claims in an Englishman's birth-right: and this is the ground taken by Mr. Locke, in his *Two Treatises of Civil Government*, against Sir Robert Filmer, as the foundation of government, of the English government, as settled at the Revolution.

To be still more particular. There are three forms of civil polity, (of which that is the least lawful and natural, which Mr. Hobbes and Sir Robert Filmer pronounce most so);—the first, where the state is governed by one man; the second, when by a few, supposed to be the best; the third, when it is said to rest with the people. By some ancients, there was conceived a transcendent form, possessing an union of the excellencies of all, without the defects of either, or, in which all the good qualities, and all the bad, should be so intermixed, as by a sublime species of alchymy, to be transmuted into gold: with them, indeed, ideal, pleasing to talk about, like the music of the spheres, though no where to be heard; and supposed to be unattainable in fact, like perfection in man.

Aristotle\* thought a polity mixed of many was the best.

\* Περὶ Πολιτικῶν, lib. i. cap. vi.



Machiavel observes, “ there never was, nor is at this day, any government in the world, by which one man has rule and dominion, but it is either *a commonwealth or a monarchy.*”

The English, and the admirers of the English Constitution, lay claim both to the theory and reality of that wonder of antiquity, a constitution, which, they say, unites, as in the links of a chain, the power of monarchy, the wisdom of aristocracy, and the virtue of democracy: this has been called a free monarchy, and proclaimed, whether truly or not, the most excellent form of government in the world. And thus much for general observation.

Of the three powers or estates in the English Constitution, the first is the King: he, in a certain sense, has no superior. *Ipse non debet esse sub homine, says Bracton, sed sub Deo, et habet Deum tantum superiorem judicem.* “ He ought not to be under man, but under God, and has God only for his superior judge.”

I introduce the above passage, for the sake of Sir Robert Cotton’s exposition: “ The Queen or King of England’s power is absolute, in acknowledging *no superior*, nor in *vassalage* to Pope or Emperor. For that subjection which by King John was made to Innocentius III., after in parliament, per præceptum Domini Papæ sep-

timo Julii, cum fidelitate et homagio, relaxatur omnino \*."

Indeed, the Roman Church, in regard to the King of England, never could produce a deed of subjection to the Pontiff, nor could a King of England grant one without his people. So that among the kingdoms feudatory to the Pope, England was never named. Neither were the Peterspence, nor the Rome-scot, ever considered as tributes of vassalage, but, as the same Sir Robert Cotton observes, they were *alms from the king*, *eleemosyna regis*.

Our English Bishops, too, have done themselves ample justice on this subject, and confuted the idle pretensions of Parsons the Jesuit, and other papists, who maintaining, in nonsensical language, that St. Peter was the first Roman *Pontiff*, have added, that he first founded the English church, and, of course, that the English church was subject to the successor of St. Peter. In opposition to the testimonies of Parsons, and his novel authorities, they have cut the matter short, supported herein by Baronius † himself, in shewing, that Peter never was in England.

\* *A Brief Abstract of the Case of Precedency. Cottoni Posthuma*, p. 78.

† Sicut in aliis multis ibi a se positis errare Metaphrastem certum est, ita et his hallucinatum esse constat. *Annal.*

But, though the office of king is of such high consideration, he is still liable to be called from his towering eminence; for it is but a trust, or power deputed in behalf of the whole community. This idea alone it is which gives it a peculiar sacredness, with true Englishmen, though in arbitrary times, that sacredness has been spoken of as inherent, or as transfused into it, like holy oil from Heaven itself\*.

The word kȳnig, kȳninc, kȳning, kȳng (for the word is spelt differently in different places), is Saxon†, and means, *one endowed either with*

*Eccles.* tom. i. anno Christi 44. Vide Episcop. Godwin. de Præsulibus Angliæ, cap. 1.

\* It is remarkable, that as the kings of Europe have been accustomed to be anointed with oil, as though to raise them to a different order of beings from their fellow-men, some Indian chiefs have been used, at their inauguration, to have tobacco blown up their nostrils by the priest, while delivering these words, "Receive the Spirit of Smoke." See *Bullenger sur l'Origine et Progres de Despotisme*.

† *Lye's Saxon Dictionary*: Kȳng, expresses quality, one *eminently valiant*; for the Saxons, when in their own country, chose *valiant* men to lead them into foreign countries, and appointed them to govern the conquered territories. Hence, Verstegan pertinently remarks, "This being the title of the chief of all, expresseth him the most apparent in courage or valour. And certaine it is, that the kings of most nations were in the beginning *elected* and chosen by the people to raigne over them, in regard of the

*wisdom or valour.* *Kunnan* means to know, and *kunning*, experience ; and again, *kun* (sometimes written *kyn*) means *stout*, or *valiant*. In different countries, the word has been applied to different officers.

Plato and Aristotle supposed, that kings were the first sort of governors. Sometimes king means an emperor, monarch, or despot, one who gives law, or whose will is law, in whom resides the whole power of the state.

Among the ancient Spartans, the supreme magistrate was styled βασιλευς, or king ; at Athens, the second archon was so called, though he possessed but limited authority. Now, in England, —though in arbitrary times the king has taken the laws into his own hands, becoming a king or monarch in the odious sense of the word,—it means *one who governs by law*\* ; and from the

greatnesse of their courage, valour, and strength, as being best able to defend and governe them. And, as Olaus Magnus writeth (libro 8.), it was an ancient custome in the septentrionall regions, that such young noblemen or gentlemen as gave greatest prooffe of their singular valour, were by these country kings adopted to be their sonnes ; yea, and to succeed in the crowne after them, if their own sonnes were not found to have in them such great valour as in them was expected\*."

\* Fortescue, de Laudibus Legum Angliæ, cap. 36. 37.

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\* *A Restitution of Decayed Intelligences.* Of our ancient English Titles of Honour, &c. p. 311.

earliest times, according to Tacitus, Cæsar, and Dion, Britain was in possession of such kings, and the people were free. He differs, therefore, somewhat from Machiavel's "one man, who has dominion or rule over another;" or, as Bullenger still more forcibly expresses it, "a detestable Constitution, where one makes the whole; and the whole is nothing;" for with us, the office not only partakes of the nature of a contract, it is a contract in form, and confirmed by an oath. Thus it was in the Saxon times; and the form of the oath may be seen in Bracton. William himself, called the Conqueror, in a council of his barons, heard the English laws repeated, and swore on the altar to conduct himself towards the English as a good king ought to do in all respects\*; as may be seen in *Wilkins's Anglo-Saxon Laws, and Laws of King William*.—That William perjured himself, shews only his power and want of principle, not his right—Thus it continued under our most arbitrary princes, as may be seen in the old abridgment of the Statutes set out in the reign of Harry VIII; so it was settled when the Bill of Rights was obtained under Charles II; so it continued when the succession was altered at the Revolution—and even Mr. Burke, who (in his *Reflections on the*

\* Selden's English Janus, p. 49. b. 2. c. 1.

*French Revolution*) with so much adroitness and zeal maintains the hereditary claims of the King of England, does in fact, and full form, concede the principle here contended for---And this is the period, at which some now date, like the time of a ship's peaceful arrival in port, after conflicting with many a storm, the peaceful, the settled, and the glorious epoch of the English Constitution.

Writers speak of our king as the executive magistrate: and so he is. For though the people are the primary source of all power, both legislative and executive, the original sovereign power, the true and only essential MAJESTY; yet, in the exercise of all executive power, through all the departments of the church, the law, the army, and the navy, all power flows, through so many channels, as from the fons potestatis, mediately or immediately, from the king. He appoints his counsellors and ministers, magistrates and ambassadors; possesses the power of life and death, in pardoning criminals, or in sealing their doom; in cases of common law, there lies, in the last case, an appeal to him; he grants honours, and he obtains homage; it is his province to regulate, though not alter, the coin\*, to denounce

\* Sir R. Cotton's *Posthuma*, p. 285. Baron Spanheim observes of the Roman mint; Ne enim Plures (Medaglioni)

war, and decree peace. When all these *jura majestatis*, “these rights of majesty,” are considered,—and finally, when it is recollected that with him rests the entire power of a negative on every law,—when these circumstances are all fully weighed, we must conclude, in the forcible language of Mr. Burke, “that a king of England is a real king\* ;” ruling, however, by Law.

It has been thought that the office of chief executive magistrate in a country should be hereditary. So it is now in England, though it was not so always with our ancestors†, the Saxons ; and so essential to our government has even the name been accounted, that a deputation *Romæ cuderentur obstitisse videtur Senatus, cui cereæ monetæ potestas, velut antiquæ libertatis umbra, relicta fuerat. Numismata Imperatorum Romanorum.* He is speaking of the time of the XII Cæsars.

\* On the French Revolution.

† Sax. Chron. per Gibson, p. 148. which was, usually, *from descent through* election, in the *true* sense of those words ; or *from and through* election only : but election was always implied : the ground of election was commonly laid in valour or wisdom, as before observed, as among the ancient Egyptians, by whom their kings were always taken from among the soldiery or the priests ; from the former, on account of valour,—from the latter, on account of wisdom. When the choice fell on a soldier, he was immediately made a priest. Plutarchi *Περὶ Ισίδος καὶ Οσιρίδος*. § 9. Among the Saxons, (and sometimes after the Conquest) every thing *like* hereditary succession was often set aside.

tion was appointed to offer the title to Cromwell himself.

But though the office is now hereditary, and considered so essential, yet being only a trust, it, by its very nature, is both *responsible* and *revertible*. When the compact betwixt king and people is violated, recurrence may be made to the nation's last resource, to fundamental principles: and the people of England have, in more instances than one, asserted their right; they beheaded a king\*, and they altered the succession.

And thus much for a KING of England, the first estate in our Constitution.

The House of Peers is the second estate of the High Court of Parliament.

Milton (in his *Defence of the People of England*) observes, after the author of, *Modus tenendi Parliamenta*, that "kings held parliaments and

\* Charles may justly be called a *tyrant*, for he assumed the right to direct and manage a Parliament at his own pleasure, and at length to *govern without one*. He was not an English *king*; he therefore deserved to suffer, though his sentence was unjust, the army being no proper, legal authority. But, "How great the distemper of that government was, " which endangered so great a disease! How great the malignity of that disease to which a Parliament was not a sufficient remedy!" *May's Causes and Beginnings of the Civil Wars in England*, as published in Part I. of *Baron Maseres' Historical Tracts*.



councils with their people, even before bishops and lords were made ; and, in general, he spake truly, if by lords he understood, as he did, *modern* dukes, modern marquisses, viscounts, and such merely hereditary names. For anciently, dignity was connected with duty, and distinctions of name were titles of office both in France, and this country, (though the Saxons had also hereditary distinctions\*.) The *heretoca* among the Saxons†, corresponding to the French *duke*, the *dux* among the Romans, was, *the leader of an army*. The ancient office of marquis, co-existing in the ancient duke, was to guard the *marches* or limits of the kingdom ; and earl, (originally from the Saxon *ear*, termed in composition *ear-elhel*, abridged, *earel*, *earle*, written by the Danes, *eorle*, *honourable*‡,) or shire-man, or *county-man*, *comes*, had the government of a whole shire, or county, or one of those several partitions, into which England was formerly divided. Hence it became necessary, that an earl, sitting as a judge over a shire, should understand the laws,

\* See Bacon on the English Government ; and Turner's Hist. of the Anglo-Saxons, vol. ii. b. x.

† Here in the old *Teutonic* means, *army* ; *toga* to *train* or *draw forth* ; hence *heretoga*. The Dutch still use the word *hertogh*, as the Germans do, *hertzog*, for duke.

‡ Verstegan.

his employment being to administer them in his *county court* ; and Alfred obliged earls to be well acquainted with the laws of their country, or to abandon their offices \*.

The assembly (called by us Parliament, comparatively a modern term) was distinguished among our ancestors by terms indicative of that energy, and of that wisdom, which ought ever to prevail in the deliberative supreme council of a great nation ; the *commune concilium regni*, the common council of the kingdom,—*magnum concilium regis*, the great council of the king,—*magna curia*, the great court,—*conventus nobilium*, *magnatum*, or *procerum*, the convention of the nobles, or chiefs,---*communitas regis Angliæ*, the community of the King of England,---and the like.

Anciently, it should seem, that all who composed this Wittenagemot, sat, together with the king, in one assembly, which, of course, formed a much more numerous body than what now composes the House of Lords.

The spirit of aristocracy rose, (in some points of view) with William : he made the Crown hereditary, altered the English fees, or tenures, and dispossessed the English nobility, to make room

\* See *Mirroir des Justices* ; and *Ingulphi Historia Abbat. Croyland.*

for his Normans \*. His system was accompanied with burdens unknown to the Saxons; and their immediate effect was, to raise the power of the few over the rights of the many. But yet, parts in this feudal system (the *latter* feudal system, introduced by the Normans) were favourable to liberty, and wanted only a more equal distribution of property, and the spirit of commerce, to advance its claims. The idea of a *feudal lord* comprehended that of lands or domains with tenants under him bound to certain duties---such as had been usual in Germany, and France---the King being the seigneur souverain of all the land. And it had always been one of the prerogatives of the greater barons to be of the king's great council before the conquest, and they were summoned by one general writ. At, and for several years after the conquest, it is probable, they were summoned by *particular writs*. The greater barons, or tenants in chief had their lesser barons, or knights, who held in like manner under them. Thirteen knights' fees made a baron's peer, and twenty knights' fees an earl's. † At the close of William's reign, the number of those who held

\* Doomsday Book.

† *Elsynge*, on the Manner of Parliaments in England, p. 46.

under him in capite, by knights' service, was about seven hundred.

The House of Lords, as now constituted, is composed of lords temporal and spiritual. The temporal lords sit in one assembly, and not as representatives of others, but in their own capacity, as equals, or peers of the realm. The lords spiritual are not representatives of others, nor yet sit in their own right, nor yet (at least in the sense of Bishop Warburton) as *guardians of spiritualities*; which, indeed, is not a phrase *applied to them*; but, though, not now at least, peers of the realm, yet as holding baronies, they are lords of parliament.

This House of Lords, in a distinct house *now* from that of the Commons, constitutes the hereditary branch of the legislature, and is the hereditary council of the king: it possesses also a judicial power, and its utility is said to consist in its being a senate, or council, to balance the two extremes of king and people. Some such assembly has been reckoned necessary even to a republic, and been proclaimed the Corinthian capital of monarchy and aristocracy.

The House of Lords having now a distinct house, as a consequence, possesses distinct privileges, and distinct powers. A member claims

audience of the sovereign; in his judicial capacity, he gives his verdict on his honour, not by oath; and he is tried by his peers, the lords temporal. No law can be passed without its concurrence: it can stop a bill after it has passed three times through the other house: it can also originate bills, as well as the Commons; and all bills proceed through three stages in this house, no less than in the House of Commons, before they can receive the royal assent.

And so much for the second estate.

The third estate of the high court of parliament, are the representatives, so called, of the people: I say, so called; for, as the House of Commons had not, strictly speaking, its rise, at first, in a spirit of liberty emanating from the people, so has it never been, not even in the purest times of the Saxons, so constructed, as to provide for a general sympathy, on any substantial scientific system of representation. We may, indeed, admit, that the greater baron possessed some sympathies with his dependents, in the Wittena-gemot, and might consult their interests: and this we will call a virtual representation: but the warmest panegyrist must proceed no further: nor has there ever been in any House of Commons a greater aggregate of per-

fection than could be crowded into a *virtual representation*.

When the greater barons were allowed to alienate their lands, those holding of them by knight's-fee, had a right to attend his court, as well as the great assembly of the nation, to which they were sometimes summoned. But they appear to have been usually summoned there for the same purpose as the clergy were summoned to convocation, (an institution entirely civil,) to give their money; and this, on account of their numbers, they did by *Representation*; these formed what were afterwards called knights of the shire, who sat two for each county. Knight, or cnicht, means, according to its ancient sense, servant, and supposes a superior to whom service is rendered:—

“ Ful worthy was he in his Lordes warre.”

CHAUCER.

In the 23d year of Edward I., boroughs and cities were directed to send deputies<sup>1</sup> to the great assembly of the nation, in like manner, and for the same purpose, viz. two from each place, and for the purpose of taxation.\* Taxation

\* And Redress of Grievances: Hobbes's statement of this subject seems correct. Behemoth, part 2d, p. 530, in vol. 2, of

appears to have been the first claim, and taxation naturally generated legislation.

Bishop Hurd, in the person of old Sir John Maynard, well observes: " 'This then being the peculiar prerogative of the feudal policy, I think we may say with great truth, not that the House of Commons violated the Constitution, but, on the contrary, that the Constitution itself demanded, or rather generated the House of Commons.

" So that I cannot by any means commend the zeal, which some have shown in seeking the origin of this House in the British or even Saxon annals. Their aim was, to serve the

Baron Maseres' *Historical Tracts*. The Baron, as Hobbes's editor and commentator, adds, " it appears from the most accurate inquiries into the subject, that the knights, citizens, and burgesses, of the House of Commons, were not constantly and regularly summoned to Parliament, till the 23d year of the reign of King Edward the first, in the year of Christ 1295." This therefore is a memorable epoch, on its own account, but more as leading to something more significant and important. In the first writ of summons on record, 49 Hen. III., the Commons, however, were certainly cited. In the 23d of Edw. III., *cum aliis incolis regni*, means *the Commons* ; and at that time the King obtained a *great subsidy*. See Elsynge on the Manner of Holding Parliaments in England. c. 6. And Dugdale's Perfect Copy of the Summons of the Nobility to the Great Councils, &c. p. 1, 2, 3.

cause of liberty, but it must be owned at the expence of truth, and, as we now perceive, without the least necessity.”\*

The *royal* boroughs were called by Henry VII. to serve the purpose of royal influence, though ostensibly, as favourable to commerce and civil liberty.

Thus, as in the natural world, unforeseen contingencies form unexpected assemblages, by bringing into union things which might seem at variance before; so is it in the moral and political world: so was it here. This assembly, the House of Commons, was originally formed by accidental circumstances, and directed by a spirit of self-interest, not of philosophy, nor of liberty. To deliberate or legislate was not its original designation, nor its regular preconcerted plan. It was the necessary result of local advantage, of civil connection, and natural capabilities.

But however these matters are, this we avow, that as our British ancestors had their councils, so had our Saxon their wittena-gemots, and that we now possess a House of Commons, our third estate, a grand provision, or public reservoir, in the event, and avowedly, since brought

\* Political Dialogues. Dial. 5.



into use, for the liberties of the people ; subsequent, indeed, in its existence, to *Magna Charta*, but appealing now to principles antecedent, to the fundamental principles of English liberty ; and, as Judge Blackstone speaks, “ it indispensably appears, that parliaments, or general councils, are coeval with the kingdom itself.” Of these principles the utmost strength was tried and called forth throughout a most inquisitive, struggling period, that I mean, to which the great work, *Rushworth's Historical Collections*, relates. They have received the clearest illustration, and the most highly sanctioned authority, from the Petition of Rights under Charles I., from the Bill of Rights under Charles II., and Declaration of Rights at the Revolution, &c.

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“ Sic fortis Etruria crevit ;  
Scilicet et rerum facta est pulcherrima Roma.”

VIRG. Georg.

The House of Commons, then, being now a distinct house, possesses, like the two other branches of the legislature, distinct powers and privileges. It exercises, in common with them, an entire negative. It can originate bills, which pass through three stages in the House of Commons, as well as in the House of Lords, before they can advance for the royal consent, and be-

come laws. It claims,—the common right, indeed, of every Englishman,—freedom of speech; the privilege of self-protection from interruption and contempt; and, for a limited time, in civil suits, exemption from arrests and imprisonment. By the celebrated statute of Edw. III., *De Tallagio non concedendo*, and others, more particularly a clause in the Petition of Rights, the king is debarred taking any talliage, benevolence, loan, or tax, without consent of parliament. Here the Commons are paramount, claiming and exercising the sole power of proposing and proportioning, the taxes; for as all money bills originate in the Commons-House, so they cannot be altered nor amended in the House of Lords. While, therefore, the legislative function of the House of Commons is reckoned its great strength, we may proclaim this peculiar transcendant exercise of the function, its balance (so it is accounted) against the weight of the other two parts of the Constitution.—And thus much for the three estates, as they are *at present seen*, of the high court of the British Parliament, concerning which be it observed, that the two Houses, considered as two persons, are not, as Hobbes expresses it, the *king's subjects*, but the three estates are *joint sharers in the same legislature*, composing, as it were, one firm in a great house;

and, therefore the reader will please to consider me as speaking of the Constitution that *now is*, and to attend to this important distinction, that the English Constitution is not the creature of a period, an infant just come from the womb, but the body of a man, shaped and strengthening through a growth of years. And while preserving clearly this distinction, if he differs from some notions already alluded to on one hand, he may, perhaps, not take too implicitly what has been advanced on the other.

For it is proper to observe, that in speaking of the King, Lords, and Commons, as the three estates, I have differed a little from many writers, those, too, of great authority on constitutional questions, and, indeed, from the express language used in many of our statutes, where the Lords Spiritual and Temporal, and House of Commons, are spoken of distinctly as the three estates. But observe ; Judge Blackstone himself admits, as he must, “ that the spiritual lords intermix in their votes with the temporal, and, consequently, that they are deprived now of the *reality of a third estate.*” If, therefore, it is necessary, that we should still speak of the three estates, we must admit the king as one ; and he has all the requisites ; distinct powers and privileges,—an entire negative,—and without *his consent* no law can

pass, any more than without that of either of the two houses : nor is Judge Blackstone's own declaration, in one place, reconcileable to any other doctrine, nor, indeed, to his own language, in another.

“ These,” (King, Lords, and Commons), he says, “ are the *constituent parts of a parliament* ; the King, the Lords Temporal and Spiritual, and the Commons ; parts, of which each is so *necessary, that the CONSENT of all three* is required to make any new law that shall bind the subject.” What then does he mean when he says, *cautiously* indeed, “ the power of the king consists in *rejecting, rather than resolving?*” Is not *consenting resolving?* Indeed, we must be permitted to add on this subject, that the same has taken place in this part of our Constitution as in other parts, which have been formed not on any instantaneous expression of the public will, but by the silent progress of time, the insensible change of local manners, and accidental circumstances,—though forms continue, when the substance is gone,—and the courtesy of parliament allows language to remain when there are no archetypes, or existing facts, to which it corresponds—when, in short, it has no foundation in truth ; as where the bishops may be called peers, which, in the modern sense, they are not ; and where the king is called our

Lord,—the parliament, the king's parliament,—the laws, the king's law,—all obsolete, feudal, barbarous language, suffered to exist, as Milton has well noticed, in his *Defence of the People of England*, by the mere courtesy, or, in plain English, the absurd complaisance, of parliament: “for forms and names,” as Warburton well expresses it, “in acts of parliament, may continue when a constitution has undergone a change, not by violence, but by slow and insensible degrees.”

As to the bishops, if they ever composed a third estate, in the more modern sense of the word, it was then when the archbishops, bishops, abbots, and conventual priors, the universæ *personæ* regni, not merely a score of bishops, attended parliament by virtue of their baronies, together with the other barons, that is, all such as held their baronies in capite, whose names and fees, or feuds, may be seen in *Dooms-day Book*; and the form and reason of whose first summons under William the Conqueror, (for it was he who changed the character of the clergy's property from frank-almoigne to baronial tenures), may be read in Selden's *Titles of Honour*. But even at that period, as Archbishop Wake has shewn in his *State of the Clergy and Church of England*, “the exercise of their *negative*, otherwise than in ecclesiastical matters, is not so

clearly handed down to us." They were not, indeed, always summoned to attend, and where individuals of them happened not to hold in capite, instances may be found, (they may be seen in the same learned John Selden's *Titles of Honour*,) of their petitioning against attending the great council, and of the king's assent to their petition. With respect to civil matters, their consent was often not asked, their dissent was sometimes over-ruled; and, even in ecclesiastical concerns, their authority was superseded, when the king and temporal barons found their opinions or their wishes clashing with the public interests, or state policy. If, therefore, when the spiritual barons formed a greater body, and were of superior account, it does not appear that they properly possessed a negative, it must have been by mere courtesy of parliament, that they have been considered one of the estates.

If by the word *estate* was meant merely a distinct order in society, the phrase might have been received as constitutional: but as it means more,—a branch, a part, even one third of a legislature, with distinct powers and privileges, with a negative on parliamentary proceedings,—it seems now incorrect. For the spiritual lords do not sit in the upper house as bishops, nor in any sense of the word, as representatives of the clergy. It does

not appear, indeed, after all Bishop Warburton has said, that they are even peers of the realm, for there still remains a *Standing Order of the House* against the peerage of the bishops: so that the opinion of some able lawyers seems to be the truth,—that the bishops sit now, according to the progress of our Constitution, by mere custom and courtesy. As to their being *now* a third estate of parliament, even Warburton, a writer by no means forward to make hasty concessions against his own order, is obliged to give up that.

Now, as the object of these Essays is not courtesy, but, to take Judge Blackstone's word, *reality*, it seemed to correspond better with our leading view, to speak of the King, the Lords Spiritual *and* Temporal, and the House of Commons, as the three estates of parliament, (these possessing all the essentials), than by describing that order, the Lords Spiritual, as a third estate, which has nothing that is essential to it, to consider it, as it must in that view be, distinct from the temporal: for, as Montesquieu somewhere observes, “when the customs of a nation change, the laws also should change;” so, when customs, and manners, and laws, and a constitution itself, are changed, language also should follow, and change too.

To the above incidental remarks on the House

of Lords, we may, perhaps, be allowed to introduce two or three observations relating to the Commons, as not being irrelative to this subject. These concern the *duration* and *extent* of parliament.

This question might be examined in three points of view; one appealing to precedent and ancient custom, the other to the principles of justice and right reason; the last, to present policy and expediency.

In proof that parliaments were formerly *annual*, we refer to the 4th year of Edward III.\* ch. 14. A.D. 1331, and 36 † of the same king; and “this rule was followed to the end of the reign of King Edward III. and through the greater part of that of Richard II. as may be seen in Mr. Granville Sharpe’s Tract, ‘a Declaration of the People’s Natural Right to a Share in the Legislature,’ page 159, 160, 161, &c. : and let it be ob-

\* Ensement est accorde que parlement soit tenu chacun an un foits, ou plus, si mestier soit.

† Item, pour maintenance des ditz Articles et Estatutz, et redresser diverse mischiefs et grevances, qui vieignent de jour en autre, soit parlement tenu chacun an, sicomme autre fois estoit ordeigne par Estatut. See notes to three *Tracts published at Ams’erdam in the years 1691 and 1692, under the name of Letters of General Ludlow*, page 133. Republished 1812, by Mr. Baron Meseres.



served, that parliaments were frequent, and generally annual, summoned by special writs from the king; that is, at the time that parliaments were first summoned, though I shall not, for the present, examine minutely this much disputed subject. Such was the practice a little after the Conquest.

To this may be added the testimony of the *Mirroit des Justices*, to that before the Conquest. Lord Coke says, that the greater part of this book (the *Mirroit of Justices*) was written before that period; and that *report goes (ut ferunt)* that *many things* in it were put forth by *Andrew Horne*, in Edw. I.'s reign, though the author himself mentions Edw. II. But without insisting on any particular period (which, it seems, rests only on report), certain it is, that this is a book of great antiquity, and Blackstone often appeals to it as of much authority. It states that the counties were assembled by King Alfred *twice* a year, or oftener, if necessary. So that calling Parliaments once, or oftener, in the year, appears to have been at least a very ancient practice. In William and Mary's reign they were made triennial, and in King George I.'s septennial.

The *extent* of these parliaments in ancient

times is not so clear. Whatever may be understood by the *Comitees*,\* in Alfred's time, whether so as to include the Commons, or as to confine it to *Thanes*, and *Counts* (*Comites*, *Earls*) who had jurisdiction over the counties, does not properly belong to this place; for the present House of Commons seems to have sprung out of the latter feudal system, introduced by William the Norman. At first the Greater Barons, those who held immediately under him in *perpetuity* (to the amount, as before observed, of about 760), and who, in that right, were of the King's Great Council, may be said to have formed a *virtual* representation; and when these were allowed to alienate their possessions, so that others held under them, by the same military service, they possessed the same right, viz. of sitting in the King's Great Council. These, called by some the Lesser Barons, growing at length too numerous to appear in person, were obliged to ap-

\* Ch. 1. Sect. 3. *Les Premiers Constitutions ordainees par les vriers Roys. Del Roy Alfred.* " Pur le Estate del Royalme fist l' Roy Alfred assembler les Comitees, et ordeigne pur usage perpetuelle que a deux foits per l'an ou plus sovent, pur mestier en temps de Peace se assembleront a Londres pur parlementer sur le guidement del peuple d' Dieu," &c. *La Somme appelle Mirroir des Justices.* Edit. 1612.

pear by representatives: out of these arose what were afterwards, and still are, called, *Knights of the Shire*. But this too was only a virtual representation; and those who did not hold by *Knight's Service*, and therefore were not *free*, that is, those who held by soccage, villenage, or *prædial* tenures, that great mass of people, were not represented by them; consequently the representation was, then at least, far from being universal.

At length, as zeal for arms and chivalry somewhat abated, as commerce and manufactures increased, as trading-towns and cities grew wealthy and considerable, it was thought necessary and reasonable, that they should send representatives, *de totâ communitate comitatûs* :\* but whatever in its progress it became, no one will say that this representation is now very pure, or *quite complete*; and therefore here and elsewhere, I have chosen to call the present, a virtual, rather than a real, representation.

On this subject we must not be surprised at the different assertions and frequent contradictions among political writers, though speaking of the same periods; nor to find royalty and disaffection

\* Anno 22 Edw. 1<sup>m</sup>.

both running themselves out of breath, contradicting one another, and often contradicting themselves: for the truth seems to be, there is much ambiguity in the language, as well as inconstancy in the parliamentary proceedings, during the times just alluded to.

Thus, Barons sat by right in the King's Council; and the distinction of *Lesser Barons* some deny.\* All the Freeholders in the same Court Baron are sometimes called Barons†; and Baron (*Bāro*) sometimes means simply a man, or including the idea of Bravery. Peers were of two kinds, those who held their feuds, fees, or tenures, on the same law, or condition, and those who had equal powers in the same court‡. So again, Archbishops and Bishops, being mentioned together with Barons and Peers in the same writ, were sometimes called Peers, yet in strictness of meaning they are not so; some-

\* Mr. Madox's *Baronia Anglica*. p. 134.

† "These Freeholders in a Court Baron were anciently called Barons, and that court called *Curia Baronum* I. S. in respect of them, and not *Curia Baroni* I. S. as now, in respect of the Lord of the Manor." *Elsynge*, p. 9.

‡ See on this subject *Spelman's Gloss.* sub voce *Pares*;

times they were even omitted in the summons, and when called, their votes were sometimes set aside\* ; with respect to the Commons, they were usually convened by the King's writ, issued to the Sheriff, but not invariably †. There is no memorial of the particular persons summoned by Edw. I. ‡ till the 22d year of his reign, though during that time several parliaments were called. For these and other reasons, the times now alluded to have been sometimes called, not unaptly, the irregular seasons of the Constitution.

At present Freeholders, and they only, are represented, or rather Freehold ; for it is property which is represented, rather than persons. Copyhold, as it is called, is not represented at all. This rule for representation has continued from the time of Hen. VI. when a law was made, that none should have a vote for Knights of the

but more at large, Du Cange's *Glossarium ad Scriptores Mediæ et Infimæ Latinitatis*.

\* Archbishop Wake's *State of the Clergy and Church of England*, Ch. 1. S. 3.

† *Dugdale's Preface to his Perfect Copy of the Summons of the Nobility to the Great Council and Parliaments of this Realme.*

‡ That of 5 Edward I. seems to have been not a *Commune Consilium*, but only partial,—See Dugdale, p. 5.

Shire, but those possessed of freehold to the amount of forty shillings a year.\* The subject of boroughs, according to the system of these times, would lead to a field of inquiry too ample to be entered upon here. But if to what has already been shewn, it is added, that some of our great manufacturing towns send no representatives to parliament, enough will have been offered, to shew how far our representative system is from universal.

So much for *precedent* and *custom*. The principles of *justice* and political expediency, in reference to this subject, are of distinct consideration, and belong not to this place, which has only to do with facts, and that historically, considered more as points of antiquity, than of liberty: though we must not forget, even as matter of antiquity, that though the House of Commons, considered in its present form, as a House of Representatives, rose out of the Feudal System, that even under William (as we have frequent occasion to hint) provision was made for the government of the kingdom by the old Saxon Laws, and that those liberties, which are called the liberties of the subject, have been since more

\* Value now about £20.---See Digest of the Laws respecting County Elections, vol. 1, ch. 2. by Mr. Serjeant Heywood.

clearly defined, and more indisputably settled — and so to return to our High Court of Parliament.

The *power* of this High Court of Parliament is said to be *omnipotent*, a term meant to express its vast extent of authority ; and Blackstone says, “ it can change and create anew the Constitution ;” and that we may not suppose he speaks figuratively, and means by that term a mere *fiction* in law, he adds, “ it can do every thing that is not naturally impossible.” But here, too, we should not believe too largely. We should at least distinguish between what is accidental and fundamental. The parliament can make and repeal laws ; by new statutes it can annul the old ones ; it may change, perhaps, the present forms or offices of the executive power ; if it ought to interfere with religion at all, it may, perhaps, alter the established religion of a country ; it may even, on great emergencies, as a convention-parliament, give a new course to the succession ; so far, perhaps, it may be correct to say, the parliament may change the Constitution.

But its powers have limits ; it could not perpetuate itself. And, if Blackstone allowed, that we have a Constitution, fundamental laws, founded on the natural rights of mankind, which, whether they were originally laid down by the people, or in-

sensibly introduced by custom, and interwoven in the laws, are received by us as the directory to the legislative body; (and it would be very hazardous to say we have no such principles, nor did Blakstone believe so, but the contrary) if this be the fact, it would be incorrect and unsafe to say—The legislature can alter this part of the Constitution. For as in a free state all the powers of the legislative body are but a trust, so are there some rights which can never be delegated away; and should even a parliament pillage the people of them, they should be demanded back, as their sacred, unalienable property.

And, has not the British legislature itself thus understood the matter? Laws have been repealed, as not being constitutional; and others allowed to stand as original and fundamental: as in Henry VIIIth's reign, a law passed contrary to the free customs of the realm, in the promoting of which, Empson and Dudley were principally concerned; but, as William Penn expresses it, they were *hanged for their pains*, and the illegal statute was repealed. The corollary is plain, as Penn continues admirably to observe, "fundamentals give rule to acts of parliament; else, why was the statute of the 8th of Edward IV. to stand as original, and this of the 11th of Henry VII. repealed as illegal? For therefore



is any thing unlawful, because it transgresseth a law; but what law can an act of parliament transgress, but that which is fundamental? Therefore, trials by juries, or lawful judgment of equals, is, by act of parliament, confessed to be a fundamental part of our government." And I am much mistaken in my opinion of the people of England, if a Bill lately passed, called *the Sedition Bill*, is not set aside, at some future period, on the same ground.

I shall here add the following summary of what is good in the English notions of liberty:—"The following, then, are received as the fundamental maxims of English law, which it may not be amiss to repeat here:---The people have a right to a free enjoyment of life, liberty, and property; a right to make those laws by which they are governed; and a right to share in that power which puts the laws in execution. To these I may be allowed to add the excellent maxim of good King Edward, which hath ever been deemed a fundamental in our law: 'That if any law or custom be contrary to the law of God, of nature, or of reason, it ought to be looked upon as null and void.' And though, in order to guard against the frowardness of private reason, our law is called legal reason (*quod est summa ratio*), because by many ages it has been

finer and refined by an infinite number of great and learned men, as Sir Edward Coke speaks; yet these fundamentals are always supposed to make part of this legal reason: so that we may apply to these fundamentals what the translator of the *Mirroure of Justices* says of the common law; That when the laws of God and Reason came into England, then came we.

“ These principles might be ascertained and established by an historical investigation; whence it would appear, that the Constitution of England is very different from what some would have us believe;---that a king of England is one that rules by law;---and that the laws of England are directed to the public interest, encouraged and secured by these fundamentals \*.”

In a few of the last preceding pages has been exhibited the peculiar character of the English Constitution, derived from the spirit of our Common Law, which has been so generally admired. When Englishmen speak of the excellency of their Common Law, it is usually in reference to its superiority over the Roman

\* Extracted from an Inquiry into the Nature of Subscription to the 39 Articles; Part III. 2d edition, printed for Johnson in 1792.

Civil and Canon Law : and every one will be here reminded of the famous declaration of the English Barons, in preferring their Common Law to the Civil ; *Nolumus Leges Angliæ mutari* : “ We will not consent that the laws of England should be changed.”

In a similar temper of mind, and in the way of contrast, I shall here lay before the readers the leading principle of the Common Law and of the Civil and Canon Law.

The Common Law of England, then, is so called, because it is *given to all in common*, as the *Lex Terræ*, the *Law of the Land*, called, therefore, by the Saxons, *Folkright*, the *People's Right*, *Jus Commune*. This consists partly of what has been received by immemorial usage and universal custom, (the *Lex non scripta*) and partly of what has been made law by the consent and sanction of the people : and it is the peculiar feature of it, that no part can either be made or altered, *at the will of the Prince*\*.

It is this law, in the person of whom the author of the *Mirror of Justices* speaks : *When*

\* Portescue de Ll. Angliæ, Cap. 9. One of the principal excellencies of the *Common Law* over the Civil, is the Trial by Jury : in the Civil Law it is by two witnesses. *Id.* Cap. 10, 11.

*the law of God and Nature first came into England, then came I.*

On the other hand, in the Roman Civil Law the voice of the people, either in person, or by representatives, was never heard; the *will* and *voice of the Prince* was every thing. It begins with the Emperor's *mandate* \*; and in the Institutes the most *sacred constitutions* means either the Pandects or Digests, with Justinian's Directory prefixed, which are thence called, *Constitutiones Imperatoriæ*; or the Code, being the Decrees of Roman Emperors; or the Four Books of the Institutes themselves, *Constitutiones* being synonymous with *ἰνστιτούται*;—in all which cases, *the will of the Prince is both the Beginning and End of Law.*†

So again, with respect to the Canon Law, that, if possible, is further from the point of Liberty, than the Civil. Even in the old Canon Law, in the earlier ages of the Church, *Constitutions* soon became little more than the Decrees of Bishops and Councils, where the voice of the people was never heard, canons, or rules, to bind conscience, and, at length, *cannons*, of iron

\* Mandavimus specialiter ipsi nostrâ auctoritate: and a voce principali procedat: Justiniani Proæmium.

† Principis Voluntas est principium et finis Legum.

proof, by which the orthodox and heterodox, in their turn, destroyed one another. As to *the new Canon Law*, when the Roman Pontiff reached his height, the *Universal Bishop* proclaimed himself *Universal Lord*. His breath swept away people, and bishops, and councils, and kings, all alike. His constitution was a law paramount to their approbation, derogatory to all persons, contradictory and destructive to the order of things.

Previously to offering any plan for diffusing the principles of the British Constitution, it will be most in order, though perhaps not most conciliating, first, to point out what may be supposed to be its defects. The subject, therefore, seems to require two more Essays; and should it hereafter justify some freedom of discussion, yet shall it be allowed all its just claims on my modesty and moderation.

## ESSAY III.

## DEFECTS IN THE ENGLISH CONSTITUTION.



**H**AVING proposed to treat, in the following Letter, on the Defects of the English Constitution, I must request the reader to keep in view the definitions contained in the last; for to those definitions I shall occasionally revert. Let us then first consider the defects of the definitions.

The reader has seen, that ancient writers, and even some of the best political writers of our own country, are defective here, owing often to imperfect and inadequate ideas of the true basis of all political authority. He must be, therefore, content to let the principles of such writers serve the purpose of definitions, where their definitions are not sufficiently comprehensive in principles. Let us then attend to the definitions

given by the more modern writers, to whom an allusion was made in our last.

When Dr. Johnson says, “ to constitute is to give formal existence, to make any thing what it is,” he is guilty of a solecism, indeed of an Irishism:—what *is*, *already is made*; and to talk of making a thing which is already, is going beyond the sailor’s definition of the word disembugue: “ I disembugue you, you disembugue me; now do you understand me?” A man may make that chair to be a stool, by turning it into a stool; but if he makes that chair to be a chair, he must unmake it, and make it over again. When Johnson says, further, “ a *Constitution*\* is an *established form of government*, a system of *laws and customs*,” he misleads us, and by throwing us too soon on government, diverts us from fundamentals, which give government all their authority, and which are, or ought to be, the very soul of Constitutions. Mr. Paine’s definition, that a Constitution† is a thing antecedent to government, the political Bible, is correct, as referrible to the American Constitutions; but is too permanent and unmanageable for so complicate, so variable a machine, I must be

\* See his Dictionary.

† Rights of Man.

permitted to call it so, as the English Constitution. Mr. Robinson's definition \* is correct, as far as Civil Constitution goes ; so is Major Cartwright's † ; but defective, in my opinion, in not taking in Ecclesiastical ; for the British Constitution is a Constitution of State and Church.

The following statement will shew the ground of this opinion. When it was enacted, that the Church of England should be no longer under the Pope, Lord Cromwell was made King's *Vicegerent* for ecclesiastical jurisdiction, and he accordingly sent out injunctions to the Clergy, in 1533 ; which injunctions, though at first opposed, were afterwards accepted, by the Clergy in Convocation ; and at all events, Henry contrived, previously, to have *an act of Parliament*, and upon *this* authority he acted, in claiming the Supremacy of the Church of England ; ‡ and though with respect to the Canons put forth by James the First, but which were never sanctioned by Parliament, it has been doubted whether they have a binding quality on the nation at large, they are generally understood to

\* Political Catechism.

† Reform, Mock Reform, and Constitutional Reform.

‡ Burnet's Hist. Reformation, Part I.



bind the clergy ; for of the legality of the King's title, as Supreme Head of the established Church, there can exist no doubt. I therefore think it correct to speak of this Constitution, as a *Constitution of Church and State* ; and a definition formed on Mr. Rotheram's\* idea of a strong arch of government rising from different foundations, but bending towards each other as they rise, and meeting in a centre, would be correct in comprehending the civil and ecclesiastical union, and, in elegant words, might be like Judge Blackstone's† admired similitude of a pyramid ; it would be, notwithstanding, erroneous, for it would suppose the Church to be *essential* and *fundamental* in the Constitution ; which I do not admit.

When Lord Fortescue‡ and other lawyers tell us, that our “ *body of laws*,” is our Constitution ; and others, that our Constitution is in our Statute-book, they tell us some truth ; but let us count their words, and not be too hasty in con-

\* Essay on Establishments.

† I call it Judge Blackstone's, because it is generally considered his, though I have met with it in a writer, I forget who, much antecedent to him. Mr. Rotheram's simile, if I mistake not, is in Nathaniel Bacon.

‡ Preface to Records.

ceding ; for statutes do really exist which are unfavourable to the rights of Britons, and contrary to the spirit of the English Constitution ; and lawyers have been too busy as legislators : statutes these, which are the dirty patches on a clean surtout, the rubbish about a beautiful building, the rottenness, which generates ugliness and maggots in a beautiful blooming peach.

Blackstone's pyramid (which may serve the purpose of a definition) rising from a broad foundation, and diminishing to a point as it rises, will apply to the Constitutions of the American States, or to any other, where there resides a mixture of the three powers, with as much force as to the English. The *equilateral triangle*, with a crown at top, the similitude adopted by some politicians, is applicable enough to a king and three estates, but does not seem to accord with the present, the real, state of the English Constitution.

Were I disposed to attempt another definition of the word, in reference to our Constitution, I perhaps might define it, The settling of original rules, and parliamentary laws, consistent with those rules, for the government of State and Church ; but, as I presume not to offer a new model of a Constitution, while I shall attempt to

point out, though I hope with due respect, some defects in the present, so I attempt not a new definition, though I think all the above incomplete. I shall only say, that no definition, which did not comprehend principles for present rule and future direction, which did not provide for the distinct offices of the three estates, which did not make room for all churches in the nation, in whatever form existing, and the introduction of laws, founded on constitutional fundamental maxims; which did not, in short, in some measure provide for those varieties which arise from change of circumstances, and the alterations of time,—that no definition, but such an one, would be complete. Some, indeed, suppose, among whom, if I mistake not, was the late Mr. Charles Fox, that a certain instability or fleetingness (though I do not use their word) is an excellency in the English Constitution; and such will rest satisfied with something short of a perfect definition. But of definitions enough: let us return to the Constitution.

Though the following principles are not all, *totidem verbis*, exhibited in any written code, like those in the American, Polish, and some of the French, Constitutions, yet they pervade our political theories, and, being seized as bearing points in our best constitutional writers, I consider them

as essential to English liberties. I am not speaking of *their* defects, but let us take them along with us while we proceed.

All free States make their own laws;—all, that are deemed such, admit, or suppose, this fundamental principle;—in all the different changes of the English Government, the people, or some persons in their name, have asserted this fundamental right.—Even William the Norman is said to have been called the Conqueror improperly : he was called Conquestor, say some,—quod Angliam conquisivit\*, because he obtained or acquired England,—under a pledge to rule by the laws of the land. That we have a right to liberty is the substance of the golden clause† in Magna Charta ; by that maxim may be *sanctioned* the delegations of power from the people, the best and wisest provision in our laws ; from that may

\* Guliel. I. Conquestor dicitur, quia Angliam Conquisivit, i. e. acquisivit, non quod subegit.—Vide Spelmanni Glossar. sub voce, *Conquestus*.—See further sub voce, Parliamentum.—Selden's opinion of this Conquest, or Acquisition, may be seen at large in Nathaniel Bacon's Historical View of the English Government. Bacon says, that he remembers judges on the bench interrupting people, who have called William, the Conqueror.

† Ch. 29. No freeman shall be taken or imprisoned, or disseised of his freehold, &c. but by lawful judgment of his peers, or by the law of the land, &c.

de *deduced* freedom of thought, freedom of speech, and a free press; from the same principle may be *deduced* the Habeas Corpus Act itself, no less than our Parliaments and Trials by Juries,—however they at first originated,—the inheritance of every Briton, and considered now as the very essence of the English Constitution:—in short, though forms have often overshadowed principles, and some bad laws do certainly exist,—yet the three great blessings, personal security, personal liberty, and the quiet possession of personal property, may be asserted by every Briton, from Magna Charta, from our fundamental laws;—according to which it has been said, *Angliæ jura in omni casu libertati dant favorem*,—*the laws of England do in every case favour liberty*; and, though Magna Charta itself is not without its defects, though it relates only to *the Free Tenants*, and there were at the time numerous slaves, yet subsequent laws have extended these rights to all Englishmen. The English law does not know slaves. By the English law, a slave, as soon as he puts his foot on English ground, is free; and any law or action of individuals, that should violate those principles, would be deemed unconstitutional: such may be called our fundamentals, and such are not to be ascribed to our defects, but to our excellencies.

The ancient Britons had Public Councils,—though we have nothing now remaining like a body of their laws\*,—but in our public libraries are the Laws and Constitutions of our Saxon ancestors†, and we now have them in print. Our British ancestors had not what the moderns understand by Charters. They were introduced, according to Ingulphus‡, by the Normans; according to others§, by the Anglo-Saxons: and no exemplar appears in our ancient laws which would satisfy such persons as so rigidly demand a written Constitution. *The Book of Constitu-*

\* Hywel Dda's (Leges Wallicæ) are of a subsequent period.

† In the Cottonian Collection, in the British Museum; in Bishop Parker's, Bene't College, Cambridge; and in the Bodleian, Oxford. These laws, the Saxon, were first printed by Lambard, under the title of *Archæionomia*, published in London in 1568. Wheler published an improved and enlarged edition of them at Cambridge in 1644, and Spelman his *British Councils* in 1639. But even Wheler, having many faults, as well as defects, Dr. David Wilkins, at the King's command, published an edition in folio, still further improved and enlarged, in 1721. This work contains all the Anglo-Saxon, Gallo-Norman, and Latin laws, (though with some spurious ones,) which now remain, from Ethelbert, who began his reign in 561, to the *Magna Charta* of Henry III., who began his reign in 1216.

‡ Ingulph. *Hist. Abb. Croyland.* p. 70.

§ Dr. Hickes's *Dissert. Epistolaris*, and Mr. Ruddiman's *Introduction* to Mr. James Anderson's *Diplomata Scotiæ*, ch. 5.

tions\*, which there occurs in our Anglo-Saxon laws, is a sort of concise book of homilies ; and, what is the Dom, or Doma-bek † alluded to there, it is not easy to ascertain ; though it was of great authority.—The word occurs in Hywel Dda's Laws, though not, I conceive, in the modern sense ‡.---This, however, is clear, that the laws were made in common council,---tam cleri, quam populi ; in magna, servorum Dei frequentia, &c. ; *i. e.* “ both of clergy and people, in a great crowding, of the servants of God ;”---for thus the proceedings in the *Wittena-gemot*, the council of the wise men, or, as it is sometimes called, the *Mickel-gemot*, the council of the *many*, are uniformly described.

\* Liber Constitutionum. Wilkins: Leges Anglo-sax. p. 147.

† Dom, or Doom, or Doma-book, from the Anglo-Sax. Dom and Bek, Liber Judicialis, and hence domesdæg, the Day of Judgment, and William the Norman's Domesday-book, or Census-book of all England, the fine original MS. of which is in the Exchequer. Bishop Wilkins observes of the Saxon, Dombec, in the Saxon Laws ; “ *Dombec*, Liber Judicialis, corpus forsitan est Legum Congestum a Regibus Anglosax: qui ante Edwardum venerunt. An autem alius quidam Liber fuerit, qui nulli hactenus innotuit, vix dicere audeo.”—Leg. Anglosax. Wilkins, p. 48.

‡ Lib. I. Præfat. prim. Dr. Wotton's translation of the words a wnaeth, is, fecit, sancivit, *constituit*, he adds, *has leges observandas*. The *constitutiones* there mean *laws*.

In this assembly, public and general matters were transacted, *Rege, Baronibus, et Populo*,—"by the King, the Barons, and People:"—laws were established; leagues were formed with other nations; war and peace adjusted; and matters relating to the church arranged and established. For in the Saxon times, it does not appear that there was any difference between a Synod\* and a Wittena-gemot, (though after the conquest there certainly was) and public grievances, as well as private oppressions found a remedy. With an allowance for the superstitions of that age, the laws breathed a tone of justice and goodness, worthy the attention of more enlightened periods,† (*vinculis coercere rarum est*,) not being so prodigal of blood; they were merciful to debtors: husbandry found strong protection; and the lands were held by easy tenures: for, by a law of the Confessors, no one holding by socage tenures could be troubled, except for his rent, nor be turned out of his farm by his lord, but for failure of doing service.

\* Compare together Chancellor Reynolds on Convocations, Nathaniel Bacon's Historical View of the English Government, and Sir Robert Cotton's Posthuma, p. 212.

† Ordeal was introduced by the Clergy. Torture, though it was practised, has no foundation in the Saxon Law.



The Saxon laws, it is true, partook of mixtures and varieties,\* as being formed much from an-

\* This, however, is said with some submission to what Bishop Nicholson says, in his Letter to Dr. Wilkins, and some regard to the truth of what he says, on the meaning of Danelaga, and that the Danish Laws were not left as an intermixture in the Saxon.—Vid. Præf. Episcopi Derrensis præmis: ad Leges Anglosax. per Wilkins: p. 15, 16. He says, “Putarant nempe interpretes Normanni vocem Laga (in Denelaga, &c.) ejusdem ubique valoris cum ipsorum *Ley* et *Legem* tantummodo significare, cum tamen *Regionem*, sive *provinciam* satis manifesto indicat.” He alludes to the spurious laws, ascribed to Edward the Confessor. But the learned bishop well knew the same word frequently occurs in the genuine laws of William the Conqueror, where Mr. Kellham, I observe, always translates it after the Latin of the Normans, *the law of the Danes*, observing, however, “the Danelae, the Merchenlae, and the West Sexelae are all here (Leg. Gul. Conquest. 3.) taken notice of, as Fortescue has observed, which seems to countenance his opinion, that those laws were not all consolidated into one body of laws, but that Edward the Confessor made a collection out of those laws, then extant, as Alfred did before him.” Fort. Pref. Arg. Ant. See Kellham’s Dictionary of the Norman Language.

It should be observed, that Mr. Kellham takes no notice of Bishop Nicholson’s distinction, but invariably translates Danelea (the Norman French) after Danelega, (the Norman Latin) the Law of the Danes. The word Les (Norman French) occurs twice by itself in these very laws of William, where it cannot possibly be taken in the sense of, Regio. These ideas may, perhaps, furnish matter for consideration in a more proper place.

cient customs, local experiments, and progressive improvements. But they had some excellent things, the features of all times ; and their divisions into decennaries, hundreds, and counties, formed a police of prodigious strength ; for the purposes both of private security and national defence, replete with wisdom ;—and even for their benevolence between fellow-men, worthy of the imitation of every age.

The British or Old Welsh Laws, though not immediately under consideration, have been alluded to, partly as a literary curiosity, and partly because the Council called by that prince, of which the preface gives an account, seems to have been formed on the plan of the ancient Saxons. The Proæmium mentions a Council assembled, consisting of six of the wise men from each hundred,\* and it has been shewn that these British Laws resembled the Saxon.

The Wittena-gemot assembled only on great occasions, and for the purpose of making laws, but at *certain* times ; at first on the new and full moon, afterwards at Christmas, Easter and Whitsuntide, *on the three great feasts*, as they used

\* Cyfreithjeu Hywel Dda, Leges Wallicæ, Hoeli Boni, ex variis Codicibus MSS. cruit, &c. Gulielmus Wotton, cum Interpretatione Latina, &c. See more particularly Dr. William Clarke's learned preface to this work.

to call them. Beside this, the Saxons had, too, their *Folk-mote*, or the assembly of the people, which was a confederation of fellow-citizens, for the purposes of fidelity and allegiance to the prince, and for complaints of grievance. This assembled once a year, on the beginning of May, or on any other emergency\*. They also had their Shire-gemots, county meetings of free tenants, twice a year, or oftener :—We have nothing equal to these institutions in excellence and regularity in the present times.

It must be admitted, that William the Norman, introduced some new laws to suit the genius of those alterations, established by him at the conquest.† Still the nation continued to be governed,

\* Spelmanni Glossar. in loco. Folkmote.

† The learned Selden, speaking on this subject, aptly quotes the following lines from Claudian :—

Firmatur senium Juris, priscamq. resumunt  
Canitiem leges, emendanturq. vetustæ,  
Acceduntq. novæ.

*In 4. Cons. Honorii.*

Which take in Selden's homely old English :

The Laws' old age stands firm by royal care,  
Statutes resume their ancient gray hair ;  
Old ones are mended with a fresh repair,  
And for supply some new ones added are.

See the English Janus, 2nd B. Ch. 1, Ch. 2.

in the main, as we have elsewhere shewn, by their old Saxon Laws ; and the above little tour has been made for the purpose of returning with a better grace to Mr. Paine's definition, which, comprehending such only as the American Constitutions, led him on to proclaim aloud, to the astonishment of many, that the English have none. But Mr. Paine's declaration should be exchanged for a modification, thus :—The English have a Constitution ; the principles of which are not always either readily seen, nor generally admitted—the privileges of which are frequently matter of dispute and doubt :—its *checks* often the cause of jealousies and divisions—partaking the nature rather of irritations, sometimes salutary, and often pernicious, more than of regular scientific movements ; and the political liberty of which Constitution, in short, must be often nugatory, the representation of the people being evasive, ineffectual, and precarious ;—a declaration this, which, leaving us under the imputation of great defects, will be considered as humiliating ; but which still leaves room for the counter declaration,---and for that reason I have run over our *Jura Libertatis*,---that the English Constitution, after all, possesses much that is good.---Let us return to our defects.

I have said, the English Constitution is defective in political liberty.

Then a nation enjoys political liberty, when it possesses, by a proper organization of political powers, the means of expressing the *public* sentiment and will, and a *controul* over its *officers* or *governors* by some *regular plan* of *responsibility*. “One nation there is,” says Montesquieu, speaking of the English, “that has political liberty for the direct object of the Constitution:” that is its excellence.

If we consider that *representation* is the only true measure of political liberty, and acquaint ourselves with its nature and extent in this country, we shall possess the true barometer for ascertaining our quantum of political liberty, and be prepared to understand the import of Montesquieu’s philosophical, freezing pause,—Ce n’est point a moi a examiner, si les Anglois jouissent actuellement de cette liberte\*;—i. e. “It is not my business to examine, whether the English actually enjoy this liberty.” Such, however, has been the aim of the author of “Lectures on Montesquieu’s Spirit of Laws,” who, though admitting that the people of this country enjoy many advantages, as citizens, over other nations, yet proceeds to

\* De L’Esprit des Loix.

shew, that even they are defective in political liberty: and till this defect is remedied in a country, it would be too extemporaneous an impulse, an extravagant, thoughtless flight, which should hurry us away with Pope,---

For forms of government let fools contest,  
That which is best administer'd, is best.

Monarchies, and aristocracies, in their nature, refer all political power to one or more grandees. Aristotle and Xenophon\* in their systems have no political liberty for the people. Plato, in his republic, mistook the way (this is well shewn by Aristotle†), through conceits about equality in wives, children, servants, cattle, and money. He was also for banishing poetry, and all the arts which employ fiction; and he encroached in some other instances on intellectual liberty. Such an equality never ought, never could be obtained. Political liberty is the only equality, at which a nation should aim. Constitutions founded on the basis of political liberty would provide for and secure, what none other can, gaudy or simple,---the public happiness. A nation may certainly adopt what form

\* *Kyres Paide*, Lib. I.

† *De Repub.* Lib. II. ch. v.

of government it best approves; but without political liberty it has no security for a good administration of government; it is playing at random, the cast of a die, a mere movement of the wheel of fortune, in the event of which, public misery has full as great a chance to turn up as public happiness. In our political system, then,---call it what we please,---here lies our first, our radical defect, it is defective in political liberty, and therefore is not in harmony with the great principles already laid down.

In the Saxon times, there was more of this balance, and therefore, through the Wittena-gemots, but still more their Folk-motes, the different powers of the government, more particularly in matters of civil jurisdiction, police, and self defence, had more of their just equilibrium, than in any other period of our history. From the time of the conquest, there has been less of this balance, and the people's liberties have, in proportion, had less security. William, though bound by an oath, yet how soon did he burst that feeble restraint! How soon his successors, William Rufus, Henry I., Stephen, and Richard! And though John was forced to his recollections, and we got Magna Charta; yet, did not both he and his successor, Henry III., easily violate charters, and cancel all obligations? When there was

so little political liberty, whence was there to be expected security? In all contentions, from those times to the present, when we complain that our liberties are gone, this defect, if we examine the matter to the bottom, will be found the real cause: a defect altogether irremediable, I fear, to any great extent, but by a more proper representation of the people than we have ever *yet* had.

Johnson (I allude to his Dictionary) is often as futile in his definitions, as he is erroneous in his etymologies; and here his definition, whether bungling or artful, let others determine, leaves no provision for a grain of political liberty. Princes, circumstanced as those just mentioned, will be always ready with their “*lingua juravi, mentem injuratum teneo*;” and the most mortifying part of the story is, that the citizens themselves are usually made the instruments of their own oppressions: for, as Machiavel well observes,---“A town that has been anciently free, cannot be more easily kept in subjection than by employing its own citizens\*.” With “the blessed name of liberty” in their mouths, they lose sight of the reality. But let us proceed to another article.

Some of the Eastern nations addressed their monarchs with the titles of divinity, and ap-

\* The Prince, ch. 5.



proached them with adoration; and Robert Barclay, a person much attached to the English limited monarchy, as was also William Penn—in the name of a religious, Voltaire calls them a philosophical sect—observes, as to “that title of *majesty*, usually ascribed to princes, we do not find it given to any such in the Holy Scriptures, but that it is specially and peculiarly given to God.” He adds, “therefore, in all the old appellations used to princes in the Old Testament, it is not to be found, nor yet in the New\*.” He might have said, also, in the writings of the most enlightened nations of antiquity, the Greeks and Romans. Among the latter, their princes and magistrates were content in the best days of their empire with titles appropriate to their offices; in a degenerate period, they became gods; in the same manner as in the rise, and amidst the glories of their empire, their coins were of the most exquisite workmanship, but became base, and badly executed, in its decline and fall.

The title of *Sacred Majesty*, which the Quakers used to object to so much, might be suffered to pass, in these enlightened times, as a mere title of courtesy, and unconnected with any constitutional claim, had it not been much abused,

\* Barclay's Apology for the Quakers.

and not merely to the purposes of superstition, but of arbitrary power,—I mean by such writers as Filmer and others, who assert for the Kings of England *a divine right*; and, considering them as the Lord's anointed, and the vicegerents of heaven, claimed for them unlawful privileges, pernicious exemptions, and unconstitutional authorities. Who can help smiling to see such a man as Sir Robert Cotton (a great advocate for the Commons, in opposition to the unconstitutional claims of the Lords), asserting the precedency of the Kings of England over those of Spain, write such a passage as this:—"The Kings of England are anointed as the Kings of France, who only have their pretensions over other kingdoms derived from miracles, in the cure of the regius morbus, which they can effect only, and that of antiquity; for Edward the Confessor healed many\*." Who, without a smile, can see such a man as Lord Bacon placing James the First only next to Jesus Christ †, whom he would have spoken of as a deity, and

\* A Brief Extract of the Question of Precedency between England and Spain, in Cottoni Posthuma.

† Lord Bacon's Advancement of Learning, in the Introduction; and in the course of his work, he speaks of witchcraft.

conceiving, or rather affecting to conceive, something occult in magic and witchcraft, because his Majesty had written a Treatise on Witchcraft? —The unconstitutional doctrine of *divine right* was the talisman which was to effect the dormant state of passive obedience; and who knows not what an abuse of our Constitution that introduced, by placing the King above Law, and what a struggle it occasioned to break the delusion? This base language, these slavish practices, breathe the spirit of Eastern governments, all tyrannies, yet all claiming to be emanations from the *Divinity*. But all this by the bye.

In the kingly office, as exercised in the English Constitution, are still united, directly or indirectly, the whole executive government, and one-third of the legislative. This was shewn in the last Essay: and to some this appears its prime excellence; to others it may seem a radical defect, or, perhaps, rather its excess. How is this, they may ask, to be reconciled to that admired maxim of our civil polity, that the executive and legislative should be distinct?

Politicians have perceived the difficulty; and they have provided, as they suppose, against it, by saying that the important *negative*, the essential to a third estate, is seldom enforced. True; it would be dangerous to enforce it: might not

this circumstance create a suspicion, in some minds, that it ought not to exist?

But, does not the supreme magistrate know he has a constitutional claim to this negative? And while perceiving the expediency, even the necessity, of conceding a claim, given him by the Constitution, may he not be tempted to use a power which the Constitution gives him not, that of controlling or of influencing the other estates of the legislature? May he not, even with some plausibility, plead conscience for using this influence? Some, perhaps, may be prepared, though unwillingly, to think, that in this power thus exercised, they have a key to the solution of that well-known maxim, "that corruption is essential to the English Constitution." And those who know the nature and extent of the executive power, need not be told, how immense its resources are for recovering by influence what it relinquishes from prudence.

We have been witnesses in our own time of two remarkable instances, in which the union of the executive and legislative power has been felt as a difficulty, almost insuperable. I allude to the suspension, through the unfortunate malady of the King, of the executive power, as it was said,--- but, in fact, was it not a suspension of the *whole legislative power too*? Could a single law be

made? The government, as one forcibly expresses it, was paralyzed: what contradictory opinions were advanced! what vague, uncertain conclusions drawn! and, after all, what unconstitutional means devised to keep the machine of the Constitution in any sort of motion!

A man may perceive, or think he perceives, something incongruous in this system, without any thing resembling dislike to the mixture of the three powers,---even with a hearty approbation of the kingly office. But what he thinks not necessary for any just purpose of favour, aggrandizement, or self-protection, may appear an excess of power, and therefore a defect in a Constitution. I know what is accustomed to be said on this subject. I know how dextrous some are in managing the balance.

Those who object to the union of the executive and legislative power in the person of the Supreme Magistrate, would have similar, if not stronger, objections to the admission of his Ministers into Parliament. They are part of the executive power. They are the channels through which corruption must flow, if it has a tendency to flow, from the *Fons Potestatis*, the Supreme Magistrate: they may be responsible; but with their influence responsibility will be but a name; it comports not with the principle openly avowed in

Magna Charta, which provides, that certain officers should hold no pleas of the Crown ;---evidently, because they are supposed to be necessarily under influence.

The supreme magistracy of the Saxons, like that of the ancient Germans\*, rested, ultimately, on elective principles, though suffered often to be hereditary in practice. Thus it continued till the Conquest. Without dwelling on any particular period, suffice it to say, that the supreme magistracy in this country is now hereditary in a particular family, but still subject to stipulations, and conducted on elective principles. The old doctrine of divine *indefeasible* right is gone by, to the bats and moles ; and an hereditary government, thus circumstanced, is understood to be the strength and stay of the English Government.

But it has been doubted by some, whether what may be the strength and stay of the supreme magistracy, may be required in any other part of the state, either for the purpose of office or dignity, or for the interest and stay of particular families. Sufficient provision seems to be made for all these---in office itself,---in the means of distinction and favour, always in the hands of a

\* Principes ex nobilitate sumunt.—Tacitus de Mos. Germ.  
The word *sumo* occurs in Tacitus in the sense of *to choose*.

vast executive power,---in the power of amassing property by men in offices,---and in the influence which high office always affords for promoting the interests of particular families throughout the country. Great evils may perhaps be conceived by some in this hereditary part of our system. It is said, however, by others, amidst some acknowledged evils, to be the Corinthian capital of our political system; and, admired as this provision seems to be by the practice of all Europe, I shall, with due submission and respect, pass it; just observing, that among our Saxon ancestors, the Ealdorman and Earl, that is, the first *officers* in the kingdom, were liable to lose their dignity, both civil and military, and a Ceorl might arrive at it. The greater Kings or Thanes indeed, might be born so, and the title was attached to landed property; (there were greater and lesser Thanes) but the rank of Thane was not exclusive; the most humble person might attain it, and the highest dignitary might lose it. The Adelings, or Æthelings\*, were nobles of royal race, but even these, so high in rank, were liable to be set aside.

It has been already observed, in reference to some definitions of the English Constitution, that

\* See Spelman. Glossar. sub Voce Adelingus.

the Church also is a part. The Church is interwoven with it in all our Saxon laws; the Councils of the Church and the Sovereign's power go hand in hand\*; and, as Sir Robert Cotton has observed, "there is a successive record of Councils, or Convocations, less interrupted than of Parliaments;" and its civil rights, though not its doctrines, were provided for by Magna Charta.

The same theory also occurs in Hywel Dda's Laws; the *King*, and *Laics*, and *Scholastics*, who, as appears from another place, were Clergy, met in one place, to frame Laws or Constitutions; the latter, the Scholastics, for the express purpose, "that nothing should be established that was contrary to the Sacred Scriptures†." The same theory also occurs in the "Lawes and Actes of Parliament maid by King James I. and his Successours Kinges of Scotland:" according to which, not only were the Prelates to appear personally in Parliament‡, but the "aulde privileges and freedome of Halie Kirk was preserved§, and the Civil power and Halie Kirk united anent

\* See an Answer to certain Arguments, raised from supposed antiquity, and urged by some Members of the Lower House of Parliament, to prove that Ecclesiastical Laws ought to be enacted by temporal men.—Cottoni Posthuma.

† *Leges Wallicæ*, p. 7.

‡ Third Parliament, p. 52.

§ First Parliament, p. 1.



(*against*) Hereticques, and to support and help Halie Kirk \*."

At the Reformation, through our separation from the Church of Rome, the union of Church and State became more close: under the Roman Pontiff, as Nathaniel Bacon or Selden expresses it, "the foundation was neither on the rock nor on good ground, but by a gin screwed to the Roman Consistory†." By our separation from the Roman Church, this gin was actually screwed to the state. The King became, in regard to the Church, the Seigneur Souverain; and, if we consider the origin and progress of our National Church, it will be found to rest partly on the authority of Princes, and partly on our Parliaments; and that the whole Constitution of the Church may now, in fact, be considered as so many Acts of Parliaments, or rather, perhaps, as one great Act of Parliament.

There are those who consider this union of Church and State as a most excellent part of our Constitution. Others consider it as one of our greatest defects. You cannot form this union, say they, without disuniting all parties: you cannot form it, without something of a spirit of per-

\* Second Parliament, p. 28.

† Hist. and Political Discourse of the Laws and Government of England, Part I. ch. xv.

secution : and the history of all Non-conformists, whether Presbyterians, Independents, Baptists, Quakers, Methodists, or Jews, they say, affords proof of it. It does not, say they, depend on the present Clergy ; they may be able, generous, mild, and enlightened men :—but in the Constitution,—and they trace all the evils of Test-laws, exclusive privileges, and such like dividing matters, to this system.

But, though this is certainly a part of our Constitution, it may, at least, be doubted whether it is the best part of it ; nor does it seem to be an essential in it :—if the Church is a fundamental part of our Constitution, we had no right to disunite it from Rome : for the union with Rome made part of our Constitution before ; and a system of exclusive privileges cannot be made to harmonize with the amiable spirit of our Civil Constitution, with any thing great in Magna Charta, or that is free, and generous, and manly, in the enlightened mind of a true Englishman.

France, amidst the many bad lessons she had taught Europe, had taught them one that was wise,—how to unite an Established Church with a complete (not *Toleration*---in her *Concordat* she reprobated the word) *Liberty*, at least with an admission of all the citizens to the enjoyment of

the common rights of citizens, yet with all due regard to the true interest of an Established Church. France gives us still the same lesson.

Thus have I, amidst great admiration of what is excellent in our Constitution (and there is certainly much excellence in our fundamentals and Common Law: our Parliaments and our Juries ought to be *most* excellent) pointed out, I hope, with all due humility, what appear to me some of its defects. I have not gone half so far on some points as Andrew Horne, the author of the “*Mirroure of Justices*,” mentioned before. But Horne has not entered on the topics that are the principal subject of this Essay. In his chapter “*De Abusion*,” he enumerates one hundred fifty-five abuses of the Common Law, and subjoins “*et autres Abusions*,” &c. His next chapter invades even our GREAT CHARTER,—“*Les Defautes de la Grand Charter*,” to which he devotes eight or nine pages. These defaults relate to what more particularly concerned those times. But two defects in it (if we are to consider that as a *Constitution*) I shall beg leave to mention, as unnoticed by him. It makes no provision for Political Liberty, in the sense laid down in this Essay, nor for *Councils* (now *Parliaments*), though it was given in one.

In what has been here delivered, I have, on

some points, spoken rather covertly, than openly ; and indeed of the evils themselves, prominent enough as effects, the causes much retire : as we see the tops of a building, while the foundation is out of sight, or the leaves of a plant, while the seed and the sap lie concealed. Still though of the evils of life, no less than of its blessings, the sources are often secret, it may be proper and useful to be aware of them, and whatever knowledge we attain, may be made a part of our practical philosophy : on the one hand, men may be guarded against misdirected, fruitless inquiries, and violent conclusions, nugatory experiments, and misplaced expectations ; wrong conclusions, and too serious disappointments\* : and, on the other, (for the public good should be the rule of all governments, and the desire of all good citizens) they may be led to keep their better feelings alive, to consider their benevolent affections not merely as a private stock, to be drawn upon only by their families and friends, but as a sort of public fund---to consider that no man is so pri-

\* It is most seriously observed by Milton—" that if it be  
" a high point of wisdom in every private man, much more  
" is it in a nation, to know itself ; rather than puffed up with  
" vulgar flatteries and encomiums, for want of self-know-  
" ledge, to enterprise rashly, and come off miserably in  
" great undertakings."---Hist. of Britain, 3d Book.

vate as not to have his post of duty—so independent as to be beneath it, so great, as to be above it, to know the weakness of our government as well as its strength.

In the above sketch, I have but glanced at many defects—our representation, which has been called *misrepresentation*—our modes of popular election, called by some *unpopular*,---the people having so little share in them, in some cases none at all---*Rotten Boroughs* (as they are called), *Lords of Boroughs*, and the like. These matters are alluded to merely, as observed elsewhere, in a general way: partly, because some are to be considered not as defects in our theory, but as evils, produced by our practice; evils, indeed, too glaring not to be seen, too serious not to be felt; and they are of such a nature and so extensive in their influence, that every one who thinks properly must wish to see remedied: but many of them do not properly belong to the Constitution of England: there is a more pervading spirit, to which, if those evils were not originally created by it, they may be made subservient: and that, it is to be feared, does belong to our system. That pervading spirit is called *Influence*; which would remain, some think, to a certain extent, even if some of the

evils to be so lamented were removed\* ; and readers may easily see, from what has already been said on the structure of our government, how influence *may* arise : though I am aware that some think, if our representation was correct, there need be no corruption, and that there would be no *improper* influence at all.

As to our Militia---here, too, the defect is rather in our Administration, than our Constitution ; for it is certain, that it is agreeable to our ancient laws, which have never been repealed, “ that Gentlemen, Yeomen, and Serving-men,” should be exercised in the use of arms, for the defence of the realm. This is what has been called the *power of the county*. Debent Universi Homines Liberi, &c. Arma habere, et illa semper prompta conservare ad Tutitionem Regni. *All freemen ought to keep arms, and to preserve them always ready for the defence of the realm* : the great advantage of such a system is, beyond that of any other which could be devised : by this every man in the country might be made effective for the purpose of military defence, without losing his civil character, and by a Roster, or Rotation, in so well-regulated a proportion, as to occasion no interruption to the public

\* *Hints to Political Reformers.*

labours\*: and from the authorities in our laws, as well as the testimony of our best lawyers, there can be no doubt that Blackstone was correct in calling it (as observed before) “the *Constitutional* Defence of the Kingdom.” I have no doubt too it might be made appear (if we had time for detail) that it might be accommodated to all the varieties of existing circumstances, and for every just and honourable use, which a nation could require.

To judge of what a national militia might do, we should recollect what armed citizens have done. Among the Spartans (a name become synonymous almost with *heroes*), the people were kept in military exercise, from puberty, till they were capable of the highest offices in the state. They held the ascendancy among the Grecian States for 500 years; and a handful of them, at Thermopylæ, resisted the whole weight of the Persians†. The citizens of the other Grecian States, so distinguished for their love of

\* *Granville Sharp's Tracts*, and *Major Cartwright's England's Ægis*.

† Xenophon de Lacedæm. Repub. Idem de Athen. It, however, must be admitted that among the Lacedæmonians, though the citizens were soldiers, the soldiers did not return to the order of citizens. The Helotæ, their slaves, cultivated the land. I have mentioned them merely to shew what a national militia might do.

liberty, were soldiers, but not kept employed beyond a limited age. In America, their soldiers are citizens. When they began their struggle for independence, they had no standing army; not one ship of war\*; yet we know what they became. In France it was a body of citizens who destroyed the Bastile, though defended by 30,000 soldiers: and among ourselves, the City trained bands have given, in the greatest exigencies, the fullest proof of effect, even beyond any other armed force†.

But an institution, however good, may have little or no value, if not under its proper discipline and legal regulations:—a constitutional, national militia, is here spoken of:—for as “our good may be evil-spoken of,” so may it be evil-acted on: and it is a great defect in our present militia, that it has too much the nature of a standing army, in its discipline, and too little of it, for any great purpose of national defence.

Alfred is said to have been the founder of our national militia: nor let any argument be formed against its utility from the invasion of the Danes,

\* Ramsay's History of the American Revolution, Vol. I. pp. 191, 197.

† Granville Sharp's *Remarks concerning the Trained Bands in London*.



during his reign. For they obtained footing in this island long before his time, in consequence of our want of a navy\*, and indeed of this excellent institution. It was not till he had *subdued*, and had either *settled* or *expelled* the Danes, that he devised it; and it was by that he suppressed the straggling troops of the Danes, which still remained, and brought the country into such excellent order; for it is well observed by Hume, “ that the court (of the Wapentake) served both for the support of military discipline, and for the administration of civil justice.”

In the same proportion, as there may be a defect in our institution of a national militia, there is, as might be expected, an excess in that of our standing armies: for when war is made an entire profession, men must live by it, and we shall always find employment for our arms.

Liberty has been often the pretence, and sometimes, undoubtedly, the object, of war; but the history of standing armies and of our English wars, too clearly shew, that they have more generally been employed for other purposes; and, that if

\* Milton's History of England, Book IV. It is remarkable that Milton has passed unnoticed this prominent feature in Alfred's administration of government. Hume's account of Alfred is the best part of his Saxon History.

they have been for the interest of individuals, or for the glory of this, or other governments (for it is part of this system to furnish other nations with money, as well as men), they are not, unless impoverishment and extirpation are public benefits, for the interest of the people.

If we should admit, from the present military fashion of civilized Europe, the expediency of a standing army for England, in order to preserve the due equilibrium of civilized character, for continuing us to be what we are, and to keep what we have gained, and that older troops, and a more exact discipline, may be accounted necessary, than may be looked for from a *mere militia*, and should all this be gone into, the subject would become very extensive, and open views more extensive still—the different interests of different governments,—the nature of our alliances and treaties with them—the balance of power in Europe—our conquests in different parts of the globe—and our means of governing them; matters these of too much magnitude and intricacy to admit of inquiries in this place.

But Englishmen will never overlook, “that in a land of liberty it is extremely dangerous to make a distinct order of the profession of arms;—that in free states the profession of a soldier.

taken singly and merely as a profession, is justly an object of jealousy, and---that the laws and constitution of these kingdoms know no such state as that of a perpetual standing soldier;---that no one can provide soldiers but by act of Parliament;---that they are excrescences bred out of the distemper of the state---and not any part of the permanent and perpetual laws of the kingdom:---and that they are therefore *ipso facto* disbanded at the expiration of every year, unless continued by Parliament \*.”

Any appearance of *excess*, rather than defect in these matters, would lead to the most serious reflections: for if in a nation which has been proud of its liberty, there should be a tendency in its government to *overawe* it by a standing army, this would be a very alarming symptom; ---this would shew, that there is no disposition to be conciliatory,---little to reform its abuses---

\* Blackstone's Commentaries, Book I. Ch. 13. He further observes, in this admirable chapter: “ Perhaps it might be still better if, by dismissing a stated number, and enlisting others at every renewal of their term, a circulation could be kept up between the army and the people, and the citizen and the soldier be more intimately connected together.” Such an oeconomy too would be of service in assisting and strengthening a national militia.

little to consult the authority of our old constitutional laws---little to give weight and true dignity to their own measures, but rather to appear in the character of masters, than the representatives and ministers, of a free people.

May all such symptoms quite disappear! But on *our excesses in wars* I wish to leave readers the following reflections: “The Review of the Causes and Consequences of English Wars,” has shewn us, that war has generally been made by the overbearing power of a few individuals in the state, for their own advantage, in contempt of the general interest; that it is one of the most dreadful scourges of the human race; and that we can only hope in future to be preserved from its ravages by those who are properly *the people*. We know of no other means of accomplishing this, but a fair representation of the people in parliament; and he who forwards this reform, without confusion and blood, is entitled to a place amongst the greatest benefactors of mankind\*.”

By way of postscript to what has been offered concerning Influence and Parliaments, I take leave to drop a thought or two of this Influence

\* A View of the Causes and Consequences of English Wars: by Anthony Robinson. 1798.

on Parliaments: for the Influence on the Legislative Body (particularly on the republican part of it, the House of Commons) is supposed by some writers to be, of all the defects in the English Constitution, the greatest of all.

*Influence* (by which some mean, particularly Mr. Hume and Dr. Paley, avowedly, *Corruption*) is thought, by many writers, to be essential, and necessary to our English theory. Now we all know *that the King can do no wrong*; and hence all responsibility falls on his ministers. But it will not be disputed, whether ministers possess the means (it is unnecessary to state them now) of influencing Parliament: and if a parliament, under that influence, legislates, it is clear the responsibility rests with them; in which case, *responsibility* becomes *ir-responsibility*. For who is to bring the Parliament to account? *Quis custodes custodiat*.

This question has often been asked; and I am aware of *Mr. Locke's appeal to Heaven*. But is there any well-ordered judicature at which a parliament so influenced and corrupted, as I have supposed, can be made accountable? The question is partly asked under a recollection, that the States of Greece\* had some such judica-

\* Amphictionium, consisting of Representatives from several States. *Pausanias: Phocicis*. Edit. Xylandri, p. 323

ture ; and because I have heard the want of it considered as the great defect (and therefore it should not pass unnoticed) in the English \*. Whether justly, let others determine.

One great defect in our Civil and Canon Law has been hinted ; *the principles* of our Common Law were entitled to our great respect.

The question relative to the best means of promoting the great fundamental principles of our Constitution, I may, perhaps, attempt to discuss in a future Essay, and, I hope, in a respectful, constitutional manner. In the mean time, I close with Andrew Horne's Summary of his Chapters on Abuses, written in Norman French, as the whole book is (Chapter V. Section the first).

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Abusions de la Comon Ley,

Les defauts de la grand Charter,

Les Reprehensions des Statut de

Merton et de Marlebridge.

Le Reprehension des Statuts de

Westminster le primer ;

Les Reprehensions de Circumspecte agatis,

La Reprehension de novel Statut

De Marchants.

\* David Williams's Lect. on Montesquieu.

## ESSAY IV.

ON THE BEST MEANS OF PROMOTING  
THE FUNDAMENTAL PRINCIPLES OF  
THE ENGLISH CONSTITUTION.

**HOBBS** sets out, in his “Philosophical Elements concerning a Citizen,” with observing, that “if in those matters on which we speculate for the sake of exercising our genius, any error is introduced, no loss but of our time ensues; but that in our meditations which relate to the purposes of life, not only from our error, but our ignorance, necessarily must arise offences, quarrels, and violent deaths.”

Locke seems to have started from nearly the same point, if one may judge by the quotation from Livy, prefixed to his *Treatises on Government*, and was evidently much indebted to Hobbes for some principles; but they were urged on by different impulses, and took differ-

ent directions : Hobbes, as seeing the horrors of a civil storm, thought quiet was to be found only under arbitrary power\* : Locke, as seeing a storm passed, thought peace and liberty could be secure only under the revolution.

Algernon Sidney, and Harrington, had previously taken nearly the same course as Locke, though under different circumstances ; and they took a different course from Hobbes, though under circumstances nearly similar.

It is not necessary to state any more particular or *private* reasons for their differences : but, to speak generally, it is obvious, that political systems should be considered relatively, and, as it were, a *parte ante*, to their principles and tendencies, as well as to any present state of things ; and civil dissensions, no less than civil harmonies, rather be traced to causes, than explored in their consequences. The material, animal, and intellectual worlds, as wholes, and as parts, are

\* I infer this from what Hobbes says in the preface to his readers of his book *de Cive* : “ quapropter si aliqua inveneritis aut minus certa, aut magis quam necesse erat, acriter dicta, cum non partium, sed pacis studio, et ab eo dicta sunt, cujus, propter patriæ præsentem calamitatem, dolore justo aliquid condonari æquum est, ea ut æquo animo ferre dignemini, lectores, oro et postulo.” Hobbes’s book *de Cive* was written at Paris in 1646.



necessarily, and individually, subject to certain laws,—the laws of their nature. They cannot escape their influence; they cannot exceed their limits: matter in all its forms is obedient to those laws; and with respect to their operation, physical and moral man is the same, a creature of circumstances, though in different relations. His actions may be modified by art, by laws, by his place in civil society; but his organization is the work of nature, and in its minutest, as well as its grandest movements, in its most energetic, as well as its most ordinary affections, invariably subject to those laws.

When philosophers assure us we cannot understand causes, that we perceive only effects, philosophically speaking, they say the truth: but all our actions,---this is no less true,---are wheels within wheels, a train of causes and effects. Though of primary causes we know nothing, yet what are but effects with respect to phenomena that preceded, become causes with respect to those that follow. And what is our guide in all the regular, useful pursuits of human life, but correct observations of those causes, and a right application of our knowledge for purposes of just reasoning, and daily experience?

Thus when the body is diseased, we refer, as to the cause, to the taking of too much or too little

food, of too much or too little exercise, to inordinate passions, or to other casualties and influences incident to our nature : on beholding a building in ruins, we consider the materials of which it was composed, and the purposes for which it was raised, more than the time it has lasted, or the power by which it was destroyed. So with respect to those tumults, and wars, and violent deaths in civil communities, it is not so much a question of what now is, as of what has been? “ *Whence come wars and rumours of wars?* ”

The opinions, professions, and conduct of men, are as necessarily influenced by causes, as the events which take place in civil society ; and we must estimate the writings of men in the same manner. Thus in the writings of Bacon and Hobbes, judging from the principles laid down, or the occasional concessions introduced in the writings of those philosophers, I infer, that some of their opinions took an impulse from their relative situations, from the circumstances of the times, more than from the genuine impulse of their own great minds, or from following the order of their own systems. And this is the most candid account that can be given of the matter, in cases where the principles of civil liberty and of arbitrary power are intermingled, like contra-

dictory masses amalgamated in one body, in the same system.

Burke was a striking example of this vacillating state of mind. Whether, as another person spake of himself, he could not afford to keep a conscience, and should always yield to *expediency*, I do not inquire: but he was certainly a political engineer, full of manœuvring powers; taking his stand often in opposite points, moving in opposite directions, and pursuing his operations by such contradictory designs, that he hardly seemed the same man; at one time laying down natural laws and fundamental principles, pleading for liberty against power and the usurpations of political establishments, for reforms against public abuses and unconstitutional influence. Then again he rallies:—behold him pleading for power against liberty, for the usurpations of establishments against the laws of nature; for the continuance of corruptions in defiance of his own high demands for the independence of parliaments; and for the support of an influence, which he had before denounced as having increased beyond all due bounds, and as being unconstitutional! Such was the political progress of Mr. Burke's mind, from the American War, to that epoch in the French Revolution which he lived to witness.

Highly probable, too, it is, that the recent commotions and changes which have taken place on the Continent,—changes which were preceded by violent flashes of light, and often followed by sensible darkness,—have occasioned, I will not say tergiversation, but rather confusion, perplexity, contradiction, unmanageable points in the opinions of many in England at this time; that some from unexpected events have receded from opinions which were thought violent, because they were earnest, and from demands which were deemed clamorous, because they were popular. But examples occur, where men are rather confounded than converted; where they may be said rather to yield to circumstances, than to abandon their principles: and they become like musical instruments, which, though not shattered and broken, are miserably out of tune, or played on by unskilful hands. Because they do not understand the world, they think they do not understand themselves: and, perhaps, in both cases they think truly. For if man has been justly called a microcosm, or little world, for the variety of his individual nature; society, from its combination of different inclinations, pursuits, interests, powers, passions, and conditions, may be called the megacosm, or great world; a machine of vast compass, intricate contrivances, inexplicable move-

ments, and deep recesses: and in contemplating it very honest men may be mistaken, when they think themselves right; and they may have been right where they think themselves to have been mistaken. And should any of us have trembled, as it were, for a while on that narrow neck of land, **FEAR**, which Hobbes makes the origin of society, I hope we shall never plunge into that ocean of arbitrary power, which for all the valuable purposes of life, would be its destruction.

Nor is it improbable, that some have gone, from the same cause, the contrary way; that, as some have been moved backward, to **Fear**, others may have been led forward, to **Hope**; that thinking circumstances of public calamity and alarm should lead nations, no less than individuals, to serious thoughts, and permanent reformations, they have eyed more narrowly public abuses, and perceived their consequences; that, thinking corruption tends to division, dissolution, and death; and that mutual sympathies, mutual confidence, and mutual protection, the great ends of civil society, can bring the dispersed interests of individuals to a resting place, and by exciting the most pleasing, the most salutary feeling of co-operation, can unite and consolidate them for purposes of public utility; they have renounced claims, which they once advocated, and advocate

claims which they once opposed; and that after vacillating backwards and forwards like a pendulum, for a long time, they may at length, perhaps, imagine they are now come to their proper point of rest; believing there is much truth in the declaration, that when “the divine judgments are abroad in the earth, the nations should learn *righteousness*.”

This Essay then does not, any more than the preceding, profess to meddle with the difficult question of Reform, except, as it may happen, by cursory allusions; and this, in order more effectually to consider some advantages which all possess in common, and to awaken those sympathies which all members of a civil community should feel with the public interest.

And yet I yield only apparently. I rather step aside, than take the opposite course. For to perceive defects, and to be indifferent about remedies, implies no great liberality; to admit, and defend them, requires *some ability*\*. Ever since

\* Such readers as choose to see the particular deviations from parliamentary representation *defended*, are referred to Dr. Paley's Principles of Moral and Political Philosophy, Book II. Ch. vi. This book is referred to for the purpose of pointing out a publication, where Dr. Paley's arguments are exposed and confuted with much acuteness. See Letters to William Paley, M.A. on his objections to a Reform

I tried to think, our Parliament has, I thought, wanted reforming, and my convictions have been

in the Representation of the Commons. Printed for Johnson, 1796. It falls in with my plan to copy from the Appendix to those Letters the following passage, ("as being declaratory of the Common Law," and as saying all I would *wish* to say,) from Sir Thomas Smith's tract "on the Manner of Governement or Policie of the Realme of Englande." "Everie Englishman is entended to bee there in Parliament present, either in person, or by procuration and attornies, of what preheminance, state, dignitie, or qualities soever he be, from the prince, (be he King or Queen,) to the lowest person of Englande; and the consent of the Parliament is supposed to be everie man's consent."—*De Republica Anglorum*, 1583, p. 35. Sir Thomas Smith was the person so well known in the History of Greek Literature at Cambridge, and who was afterwards secretary to Edward and Elizabeth.

Dr. Paley's Defence of our *present* Parliamentary Representation is evidently a system of accommodation, founded on his doctrine of expedience. In 1774, he published "A Defence of Bishop Law's Considerations, in reply to Dr. Randolph on the Propriety of requiring Subscription to the 39 Articles." There he says, "It is obvious that subscription to the 39 Articles might be altered, or withdrawn, upon *general principles* of justice and *expedience*;" and in his chapter on Religious Establishments, in his Principles of Moral and Political Philosophy, Book VI. Ch. 10, the same writer defends, or at least apologizes for, subscription, by the doctrine of expedience. To such *reasonable* lengths may this doctrine be stretched. In another place, he calls the influence of the Crown the *more successful expedient*.

every day increasing. But the subject is too large for my present limits, and involving, as it must, the minutiae of particular deviations, does not so properly belong to this place. So, as I have already said, I have rather glanced at reform, than looked it full in the face.

With this view were stated in former Essays definitions and opinions of different writers, churchmen, dissenters, lawyers, and political writers, on the British Constitution, with such reserve for private sentiment which occurred at the time, with due approbation of what seemed good in the English Constitution, but with some discriminations between what was fundamental and accidental principles; between *what was*, and *what is*, and, from considering the changeableness of all human institutions, *what may be*; recollecting what has been so well illustrated and enforced by Algernon Sidney, “that good governments admit of changes in the superstructure, whilst the foundations remain unchangeable.\*”

Blackstone expresses somewhere the changeableness of our Constitution in this lax, loose way: “What our Constitution now is.” Lax it is, and loose, yet truly expressed. What our Constitu-

It is clear this able writer knew what was *right* on the above subjects.

\* Discourses concerning Government, Ch. II. Sect. xvii.



tion is, we may know; it is before our eyes: what it may become, is unknown: it depends, like our lives, on contingencies; it is buried, like our hopes and our fears, in the dark womb of futurity. Philosophers and politicians have speculated on the pleasing, awful subject, some concluding, that the democratical part of our Constitution will bring on a republic; others, that the monarchical will bring on despotism. So thought Hume. Montesquieu, who seems to have been of the same opinion, says, “it will perish when the legislative shall be more corrupt than the executive.”

In speaking on the principles of civil government, it is usual to appeal (as in the present case) to philosophers and politicians. But it is not necessary to play the politician or philosopher. Those principles, which ought to govern societies of men, are deducible only from our wants, and appeal to that *divine light, that lighteth every one that cometh into the world*, the primitive reason of man: they are not difficult to ascertain, nor difficult to be understood. Our base interests and passions, our prejudices and superstitions, may throw a mist before us; and the impostures of governments may involve us in mysteries and darkness: but let us feel our proper wants, and,

in the exercise of reason, we shall not mistake our way.

And however arduous, and almost impossible, it may appear, to purify masses of society, immersed in the errors of government, yet, let individuals but know themselves, with their relative state in society, and their duties become clear ; reason points out their duty, and their duty is supported by reason ; man should do what is right, and not be troubled about consequences, often rashly deduced by sophistry :

Act well your parts, the rest belongs to Heaven.

Yes! be the issue what it may, our present duty is clear. It is our duty as men, as citizens, as Britons, to assert and propagate our natural rights and civil privileges, as being, happily for us at present, the basis of British liberty : and whatever changes our Constitution may undergo in its future course, may it still be cemented by such principles, like those English vessels, which, though composed of different timbers, derive their principal strength from the British Oak!

We proceed then to consider the best means of promoting the great fundamental principles of our Constitution ; and in doing this there is no necessity for repeating those principles ; but just

to hint, that as they relate to every individual in the state, every individual in the state should feel an interest in them ; and, that though no distinctions, merely nominal or accidental, will fall under our present view (at least in the way of criticism or discussion), yet that every individual under those nominal, accidental distinctions, is bound to give those fundamental principles their support.

And *first*; as the Church has been shewn to be a part of our Constitution, it follows, that the clergy, or ministers of that church are obliged to support and promote what is so essential to the Constitution, both from interest and gratitude : from interest,—because to the State (which word I use here in the sense of Constitution) they must look for the support of the church's revenues ; when that support fails, their temporalities are no more \*,—and from gratitude, because they are

\* That what Mr. Burke says on the church's private property, (Reflections on the French Revolution, p. 150, 1st Edit.) and that what Bishop Warburton says on the independence of the clergy, prior to his notion of the Alliance, is incorrect,—see pp. 242, 243 of the Inquiry into the Nature of Subscription, referred to, p. 127 of the second number of the Reflector.—I say this with a full recollection of what is said Chron. Sax. 41—49; and that “ na (no) man let them (the Clergy) set (lease) their landes and teindes (tithes),—and wrangeously annalie (wrongfully aliene)

in the relation of receiver to giver: for, according to the *present* state of things, their revenues are not the private property of the church, but a donation from the state, or, which is the same, in this case, from the Crown; and, of course, from civil obligations they are bound to civil duties: and how can they discharge their duties to a constitution better, than by promoting that part which is essential and fundamental?

This obligation appeared so reasonable, so indispensable, to our ancestors, that it was not deemed sufficient for the prelates and clergy originally to confirm Magna Charta, (while holding lighted torches in their hands they recited a most terrible curse against the violators of it), but the clergy were even obliged to bring forward Magna Charta to the remembrance of the people, by reciting that golden clause, as it has been called, in the church, that “no man be TAKEN but by legem terræ,—by common law, &c.—with anathemas against the impugnors of it: the whole proceedings in which case are preserved in ancient records.\*

their landes.”—The Lawes and Actes maid be King James I. &c. of Scotland.

\* See the Confirmation of the Charters of the Liberties of England, and of the Forest, made in the 35th year of Edw. I. the *Sententiam latam super Chartas*, the *Sentence of the*

Our ancestors were not afraid of mingling wholesome constitutional politics with their theology ; and accordingly, in our oldest laws, the leading moral rules of the Scripture are intermingled with the most prominent parts of the Common Law, as already observed.—Our ancestors seemed to have considered our fundamental principles as a rich fragrance, or sacred emblem, like the holy oil on Aaron's garments.

Under what authority the clergy have ceased to read these sacred mementos to their congregations, and to give the salutary stimuli of clerical admonition, I shall not inquire ; but I cannot help remarking, that as that ancient provision illustrates the propriety of the practice, so the learning, the dignity, what some would call the sacredness, attached to the office, and the familiar intercourse which should subsist between the clergy and the people, ought to render the clergy peculiarly fitted for the office of transfusing the first principles of our Constitution.

*Clergy against the transgressors of the above Statute, and the Curse of the Bishops against the violators of the GREAT CHARTER.* N.B. This curse is left out of an old printed Statute-book, but inserted in one in 3 vol. A. 1557. The more solemn curse, expressed in the reign of Henry III. is also left out in some modern Statute-books, but may be seen at large, in ENGLISH LIBERTIES, or THE FREE-BORN SUBJECT'S INHERITANCE, pp. 31, 32, 33.

It cannot be denied, that the clergy have been, too often, the advocates for arbitrary power; and that their sermons have frequently breathed a spirit very different from that of English liberty. This is too true; and as the station of the clergy gives them great influence in the community, cannot be too much lamented. But let us still do justice: since the Revolution, the writings of the clergy have, many of them, caught a tone from Locke. And what friend to constitutional liberty, who has perused the works of Burnet, Hoadley, Sykes, and Blackburne, has not derived pleasure and instruction from them? Bishop Hurd's Dialogues on the very subject of these Essays—the English Constitution, we have had occasion to refer to before, and it is an excellent work, founded on true constitutional principles; and many others, as excellent, might be pointed out. What *religious* doctrines, and rites, sacraments, and discipline, the established clergy may think it their duty to support, as teachers in a *religious* community, is totally unconnected with the present subject: what concerns religion becomes an affair of *conscience*, which only religion addresses; but what is of a nature merely *civil* (as what we are now treating of, is) addresses other feelings, and the duty arises from other obligations: and so to proceed.

The same influence which the established clergy have over their flock, dissenting ministers have over theirs; and they are not merely to be justified in using it to promote the fundamental principles of English liberty—they seem, by the most weighty considerations, bound to do so. To these fundamental maxims they owe much, and to them they should look for more. In the exact proportion as their complaints against Corporation and Test Laws, are just, should be their zeal in promoting the fundamental principles of the English Constitution: for those principles are favourable to their plea; and the just operation of them would remove the grievance.

I cannot forbear remarking here, that by whatever religious tests the clergy may think proper, (agreeably to what was just now hinted) to bind themselves, yet that, in cases purely civil, it is not congenial to the spirit of our Constitution, properly understood, to introduce doctrines of theological import\*: they make no part of Magna Charta—no part in the Act of Settlement. For the introduction of doctrinal matters, as tests for the members of our universities, we are indebted

\* Fortescue, in his admirable book *de Laudibus Ll. Angl.* says nothing about doctrinal points.

to the authority of James I.\* who made so free with our constitutional liberties; and the Corporation and Test Oaths were not originally aimed against the Protestant dissenters, though afterwards applied to them †.

And here it should be acknowledged that the dissenters have not been defective in promoting the principles of the English Constitution: their churches are often founded on principles not congenial with intellectual or religious liberty; but, as individuals, the dissenters are generally found favourable to civil.

This observation might be illustrated from the writings of the Puritans, who, from their first rise down to the Revolution, when they thought themselves aggrieved, were in the habit of appealing to the principles of the English Constitution: thus Barrow, who suffered death in Queen Elizabeth's reign, for publishing a book, called *The Discovery of False Churches*, maintains in it,

\* Stat. Academiæ Cantab. Literæ Regiæ.

† See Bishop Hoadley's Refutation of Bishop Sherlock's Arguments against a Repeal of the Corporation and Test Laws; and, the Right of Protestant Dissenters, to a complete Toleration, Ch. 1, 2; where is given a History of the Corporation and Test Acts, and it is shewn, that opposition to popery was the primary end of both.



that “ the High Commission Court was prejudicial to the prerogative of the Prince, to the jurisdiction of the Royal Courts, to the liberty of the free subject, and to the Great Charter of England ;” and, after the Revolution, more to the same purpose may be seen in Mr. Pierce’s *Vindication*, the second part of which goes exactly on Mr. Locke’s principles of Civil Government. From the Revolution to the present times, the public discourses of dissenters from the pulpit, as well as their other writings, have displayed their great zeal in propagating the same principles of the English Constitution, as settled at the Revolution; as witness the **SALTER’S HALL** Sermons, together with the numerous writings of Priestley, Price, and Robinson. Dr. Priestley wrote largely on the subject; Dr. Price’s *Essay on Civil Liberty* was, some years ago, in almost every body’s hands; and of Mr. Robinson’s *Political Catechism* I should naturally take notice, (I have already alluded to it,) did not other of his writings breathe the same spirit.

As it is the duty of dissenters, in common with churchmen, to feel an interest in the fundamental liberties of their country, so, from the constitution of their churches, their ministers are fitted to disseminate them in the most deliberate, effectual, yet constitutional, way. And those who call

themselves **Evangelical Dissenters**, in opposition to others who call themselves **Rational**, as they have an equal reason of attachment to their civil rights, have shewn an equal zeal (and it is their duty) to propagate them. And they very lately saw the happy effect of that spirit which united them : I allude to the combination of ministers of all denominations—**Calvinists**, **Arminians**, **Soci-nians**, and **Methodists**, for the purpose of maintaining one *civil* right, that of teaching their own doctrines according to their own pleasure. Here they united ; and, with the support of the leading men both in church and state, they carried their point\*.

The ministers among the **Quakers** do not allow themselves to allude to political matters in their public discourses. But **William Penn**, if I am not mistaken, was occasionally a preacher ; (for among this society, though they have properly **Ministers** or **Teachers**, yet all may *prophecy one by one*), he was at least a legislator and politician : and his writings aim to propagate the purest principles of **English politics**†. And, on considering that the **Quakers** enjoy some privi-

\* This bill was brought in by **William Smith**, Esq. Member for **Norwich**.

† See his **Political Tracts** in his **Select Works**.

leges peculiar to their own sect, and beyond what the other dissenters enjoy, they are laid under greater obligations. Let me add, that the peaceable deportment of the Quakers renders them peculiarly fitted for the propagation of the fundamental principles of our Constitution\*: for those principles are opposed to oppression and slavery, in all forms; their operation would unite different interests by one common tie, and in all their directions tend to promote liberty and peace; pure perennial springs, “the streams whereof,” to borrow the language of the Psalmist, “would make glad the city of God.”

Ought we, ought we, to overlook the Catholic clergy? or, while calling on them for the discharge of duties, should we be unprepared to do justice to their principles? The British Catholics of the present day differ as much in their politics from Bellarmine, Parsons, or Allen, the papists of former times, as the present clergy of the established church from the clergy in the reign of King James: and as the latter no longer hold the *jure divino*,—the divine right of Kings, neither do the former, the right of the Pope to dethrone Kings, or to interfere in affairs of state. Their

\* Barclay, in his Apology for the Quakers, lays great stress on this argument in his Address to the King.

obedience to the Pope relates wholly to *religious* concerns. They are as hearty friends to the *civil* establishment of religion as the English established clergy; and, though differing from the dissenters as to the spiritual authority of the Pope, they agree with them in the separation of religious from civil power. These doctrines, though formerly maintained by the school divines, are now disclaimed by all sober Catholics: nor do the British Catholic Clergy hold any doctrines as Catholics, which unqualify them for the propagation of the fundamental principles of our Civil Constitution, as Britons.

Indeed, for promoting those principles, Catholics of the United Kingdom have not only many reasons in common with others—they possess some peculiar to themselves: they are influenced by considerations of conscience, beyond any other part of the community. Their ancestors bound themselves by oath to these principles at the Revolution: fifty thousand Catholics, with the bishops at their head, have pledged themselves to the principles of the Revolution in 1688: and that revolution was grounded on those fundamental principles, not those principles on the revolution.

Dr. Alexander Geddes's political sentiments, intermingled with his biblical and theological

writings\*, are those generally avowed now by the English Catholics. Mr. Plowden has more professedly unfolded those principles in his *Jura Anglorum*, or Rights of Englishmen; and in his *Church and State*, or his Inquiry into the Origin, Nature, and extent of the Ecclesiastical and Civil authority, with reference to the English Constitution†, he has discussed the whole Catholic controversy (he is a catholic himself) on the subject; he has dilated on the fundamental principles of the English Constitution; and has unanswerably proved, that the Catholics, both clergy and laity, are bound to them, both from choice and by oaths.

Catholics, then, are bound to be in earnest on this subject; their exclusion from offices of trust and public utility should increase their zeal: arguments arise on all sides for their enforcing the claims, and for our giving them a full hearing. They have repeatedly proved themselves both capable, as they are willing, to give the state a civil test, however they may choose, by a *religious* one, to bind themselves to the head of their church; for in Magna Charta, in the Act of Set-

\* I allude here only to the political opinions of Dr. G. as having been a Catholic clergyman.

† Book i. ch. 9.

tlement (this cannot be too often repeated), and in their oath to the Protestant Succession, there is nothing that can enslave (and this only is the feeling concerned in *religion*) their *conscience*. In the Catholic claims now making there is a voice which will be heard, and felt ; whatever be its immediate tendency, its ultimate end must be, to help forward the cause of civil liberty, the fundamental principle of the English Constitution.

And here let Dr. Paley speak : “ I would observe, however, that in proportion as the connection between the civil and religious principles of the papists is dissolved, in the same proportion ought the state to mitigate the hardships, and relax the restraints, to which they are made subject\*.”

The opponents to Catholic Emancipation are to be justified for speaking with horror of the faithless treaties and dreadful persecutions, in former times. The Ecclesiastical History of Africa, of Spain, of Rome, and Italy †, are full

\* A Defence of the Considerations on the Propriety of requiring Subscription to Articles of Faith, p. 26.

† For the abundant proofs of perfidy and cruelty in these countries (as well as in others), see Mr. Robinson's Ecclesiastical Researches, under the heads, *Church of Africa—Church of Spain—Church of Rome—Church of Italy*.

of blood. A more perfidious act than that against the Protestants of France, the Revocation of the Edict of Nantz, by Lewis the 14th, cannot be well conceived, nor more unnatural and cruel oppression which followed it: and the excellent Mons. Claude, the advocate of the Protestants, has ably shewn what just ground his party had for a separation; and the injustice of the popish persecutions\*. But may not the Catholics' rejoin? Was not Charles II. faithless, in violating the

\* The title of the Book alluded to, written by Monsieur Claude, who was at the head of the Protestants in France, at the time of the Revocation of the Edict of Nantz, is entitled, the Defence of the Reformation. It is the best of Claude's Works. It was first published, in French, at Roan, in 1673; the English translation, published in 1683, had become extremely scarce, and was therefore republished in 2 volumes, 8vo. by the Rev. John Townsend, in 1815; and it is a work, which, though it cannot be admitted as argument in our modern disputes, may be considered as a faithful and valuable history of the facts and controversies in those periods to which it relates.

In ample proof of the other facts alluded to in the text, see Mr. Walker's Attempt towards Recovering an Account of the Numbers and Sufferings of the Clergy of the Church of England; and on the same subject, Angliæ Ruina, with Querela Cantabrigiencis; and on the other side, Dr. Calamy's Abridgment of Mr. Baxter's History of his Life and Times, Pierce's Vindiciæ Non-conformistarum, together with the Right of the Dissenters to a complete Toleration.

Declaration of Breda for Liberty of Conscience? Were not the Episcopalians faithless to the Presbyterians, in directing acts against them, that were designed against Papists? Did the Parliament party keep faith with the Royalists? then again, did not the Presbyterian party eject the Episcopalians, and imprison many of their most learned men? And in return did not the Episcopalians eject 2000 Non-conformist ministers from their livings, and imprison many of them? What shall we say of the penal laws against Papists? Was there not uniformly a persecution of Papists in Queen Elizabeth's, in James I.'s, in Charles I.'s, during the interregnum, and Charles II.'s reigns? If England has a martyrology to produce against Catholics, cannot Catholics in their turn, produce a martyrology against England\*?

\* I have perused such a book, though I suppose it is extremely scarce; it of course could not be printed in this country; and I have never seen but one copy of it. It is entitled, *L'Histoire de Persecution present des Catholiques en Angleterre, enrichée de plusieurs Reflexions, Morales, Politiques, et Christiennes, tant sur ce qui concerne leur guerre civile, que le religion.*

Par le Sieur de Marsys.

With a Table de Martyrologe—1640—1641—1642—1643—1644. Let us observe too this was under the Presbyterians.



In short, we should all take to ourselves shame, repentance, and confusion of face, for what has been wrong either in ourselves or our fathers, and former times be appealed to only for matter of humiliation, and motives to reformation. "We have all gone in the way of Cain, who slew his brother." The evil has originated in intermingling religion with politics, in making our creeds the badges of good citizens. Experience has shewn us the injustice, the cruelty, the fruitlessness of the project. Surely it becomes Protestants to have removed from them that great objection, which was brought against the Reformation, "that it led to endless *separation*\*; that it encroached on *private* judgment, not less than that church which claimed perpetuity and infallibility"—particularly, as France itself has set the example of a more complete liberty. Catholics and Protestants have alike been put in the furnace of affliction; they still feel the smart; and it is the nature of affliction to teach sorrow

\* This argument was enforced by the celebrated advocate of the Catholics, Bossuet, in a conference with the Claude just mentioned: and Claude's biographer and admirer admits, that "the argument was urged home by the prelate, and lies unanswered to this day." Robinson's *Life of Claude*, prefixed to his *Essay on the Composition of a Sermon*, p. 38.

for sin, and love of justice. To come out of the furnace, with the pain without the purgation, will be to convert our afflictions into double guilt, our wholesome chastisements into permanent and dreadful judgments.

As to the instances, that may accidentally fall in our way, of a persecuting spirit in Modern Papists, they can be made little use of, in a way of argument, though they may, of much just reprehension. Ignorance of civil liberty may be found among individuals of every community; and bigotry among those the most enlightened, humane, and free. But bodies of men are not responsible for their folly: would we keep millions of people disfranchised, to punish a handful of ideots?

If we might be permitted to exemplify the principles just laid down as being those of modern Catholics, by an individual example, it should be in the conduct of the venerable M. Gregoire, the constitutional Bishop of Blois; and of him the rather, because he is a faithful and true Catholic, holding that great doctrine of the Catholics, that “out of the pale of the church there is no salvation.” But what then? This is his point of faith. Let us hear him on civil matters. “I would say as a Catholic to my Protestant brother, I believe thee to be in an

error; my duty is to pity thee, to implore the Father of Light, to illumine thee, and to do thee all the good in my power. As citizens our rights are equal; and, if in the case, for instance, of election to civil offices, I prefer an illiterate and immoral Catholic to an upright and intelligent Protestant, this partiality, which would oppress merit, and betray the interests of my country, would be a crime." Few have been more consistent advocates of civil and religious liberty, in France and in England; in France against the impetuosity of the revolutionists; in favour of Protestants against Catholics in France; of Catholics against Protestants in England; and in favour of *true civilization* and *humanity* over the whole globe: and, in his combining one series of arguments against the *Slave Trade*, and Irish emancipation, there is something of shrewdness, as well as much justice and humanity, in the title of his book, "*On the Slave Trade, and on the Slavery of the Blacks and of the Whites; by a Friend of all Colours*\*."

In regard to others, those who belong to no Christian church, I am aware, that the customs of society, even in cases which are wrong, are too

\* There has lately been published a Translation of this valuable Tract, (with<sup>o</sup> prefatory Observations and Notes), by Conder, 18, St. Paul's Church-yard.

apt to influence men as individuals. This is the reason, why Christians are apt to overlook Jews, and others, in appeals of this kind. But there is no just ground for such neglect. When Christians are reasoning themselves into a sense of their rights, or *petitioning* for them, it should be with open arms: *here* is “neither Jew nor Gentile:” it would be extremely difficult for any Christian sect, zealous in their own behalf, for civil and religious liberty, to give such an interpretation to this passage, “What ye would that men should do unto you, do ye so unto them;” yes! it would be extremely difficult, I say, if not impossible, to give such a passage any thing like an exclusive sense; I mean an interpretation, which might encourage a too appropriating spirit, a spirit of ascendancy authorizing them to discountenance the natural, civil, and religious claims of any, whether Jew or Gentile, of their brethren of mankind\*.

Nor does it seem, that any greater or more general considerations can be urged on others, than on Christians, for pleading their natural rights, and for a due estimation of the advantages of a free government. The advantages of the British

\* *Justitia fruens, felix per Legem est.* Fortescué de Laud. Ang. c. 2.

Constitution belong to all: they should belong *equally* to all; and all equally should feel an interest in their support. “Am I not a man? am I not a Briton?” comes with as much propriety from the mouth of a Jew, as of a Christian. And Christians in this country, who pass such commendations on their Constitution, should not leave their enemies to sing, (I speak in reference to the privileges of free-born citizens,)

The year of jubilee is come,  
Return, ye exil'd wanderers, home\*.

Neither should Jew or Gentile, residing in a free country, be indifferent to its civil advantages; and where any indifference is found in those who should instruct them in the principles of liberty,

\* There is a valuable (pity it is it should be scarce) publication, wherein an historical survey is taken of many misrepresentations and grievances under which the Jews have laboured in this country. It was written by a liberal-minded English Clergyman, and is entitled, *Anglia Judaica*. The subjects alluded to in this Letter do not fall under consideration in that work, but if properly viewed, might be added to the list of hardships, to which Jews lie exposed in this country. For all *ascendancies*, on a religious account, whether Catholic or Protestant, producing civil disqualifications, is religious persecution.

there is the greater reason, that they should inform themselves.

But, after all, let us not mistake:—not as Churchmen, or Dissenters, or as Quakers, or as Catholics, or Jew, or Gentile, simply considered, do men take the impulse of Civil Liberty: it is by knowing, by feeling their just rights, as men and citizens. Some of all parties are favourable to them; many know nothing about them, or are enemies to them. Theological opinions, too, we see, divide them into parties: it is therefore well ordained, that they should have common civil interests—some rallying points, round which all men should meet, and consult together for the public good.

Lord Bacon observes, concerning Government,—“ It is a part of knowledge secret and retired, in both those respects in which things are deemed secret: for some things are secret, because they are hard to know; and some, because not fit to utter. We see all governments are obscure and invisible;

“ Totamque infusa per artus

Mens agitat molem, et magno se corpore miscet.

“ Such is the description of governments.”—So

again: "Even unto the general rules and discourses of polity there is due a reverent and reserved handling\*."

What he meant, and why he said it, is clear from the paragraph that follows. But, without discussing his meaning, the observation is not applicable to those fundamental laws, on which depend the laws, liberties, and rights of Englishmen: there is nothing in them naturally mysterious, nor necessarily inscrutable; they cannot be too clearly stated, nor too generally understood.

It is observable of Hobbes's book, alluded to above, that, according to him, the Natural and Moral Law, the Divine and Christian Law, are one and the same: notwithstanding, therefore, his system does not allow men to discuss the laws, and the religion of the citizen must be the religion of the state, yet, if a teacher is to explain the divine law, he must necessarily, in consequence of this union, unfold the law of nature; that is, according to his own ideas, the fundamental laws of civil society. So much at variance are political theorists with themselves!

2. Next with respect to the Nobility. The dignified station, the superior privileges, and ex-

\* On the Proficiency and Advancement of Learning, Book II. ch. 2.

tensive property of the Nobles, tie them, by a link of interest, to the laws and constitution of their country : they are called to the discharge of the highest duties of public life. But as a larger circle includes the less when drawn from the same centre, so do the higher duties of life those of the lower. Nobles are only privileged citizens : and their zeal for the rights of citizens should be of equal celerity with that of zeal for the mere privileges of an order. Fundamental law is nearer center, than accidental advantages and nominal distinctions. The noblest feelings of Nobles are, to sympathize with the people: feelings they are of magnanimity, not of self-degradation; feelings to which Patriotism gives the impulse, and of which the result is Liberty : not, I own, quite in harmony with Xenophon's adage (with which Montesquien's sentiments seem to have corresponded)—“ The nobles are favourable to nobles ; the people take care of themselves.”

As the Nobles compose an estate of Parliament, the House of Lords is the sphere, in which their principal exertions are seen, but not that to which only their influence extends. And how wide, and how deep, may that influence be spread, for purposes either bad, or good ! For let it be observed, though by Nobles I here mean more



particularly the House of Peers, yet in that house I include such as sit there as Peers of the realm, and those who sit there as Counsellors in matters of law ; such as the Judges of the Courts of King's Bench and Common Pleas, with other law-officers : together with such as sit there, whether it be as Lords of Parliament, or by the courtesy of Parliament, I mean, the Bishops.

And here it is not intended to notice such as have used their influence for bad purposes ; who, by encroaching on the rights of the people, have discredited their own order, and have undermined that palladium of our liberties, which it was their duty to have supported ; but a few only of those who, in accordance with their great rank, have had great feelings ; and who, speaking from a high sphere, have given a dignity to their sentiments. Such men are examples, and will be here introduced as motives, being philosophically, no less than politically, nobles\*.

Trial by a Jury of their Peers, is a right which belong to all members of the community alike, Lords as well as Commoners ; in this, as in a public bank, on which all may draw, all possess an equal interest ; and, while so many have conspired

\* *Pulchrius multo, parari, quam creari, Nobilem.*—See Selden's *Titles of Honour*, p. 854.

to corrupt it, pleasing it is to contemplate some of high rank, who have shewn zeal to preserve its purity. For though its excellence depends not on their authority, yet the testimony of great men carries weight, in cases which are often perplexed by artifices, or over-ruled by power. The duties and powers of Jurors have been well ascertained; their boundaries clearly marked out, by men of superior abilities, in our own times; and here and there, in different periods, we meet with noblemen, who have, rising like flowers over a spacious meadow, given fragrant testimony in favour of this fundamental of the English Constitution. On this point Lord Somers distinguished himself, both by his public professions, and occasional writings. On the same subject, Lord Camden bore a noble testimony to that side of the question, which may be called the popular, and which is certainly the true, side—I mean, which determines the right of a Jury to determine on matter of *law*, as well as *fact*, and which takes in *the intention*. In our own time, also, Lord Stanhope and Lord Erskine have written most ably on it, and taken the same side.

Judges and Crown-Lawyers have, like Bishops and Crown-Divines, been too much accustomed to encroach on the liberties of the people; and, as the latter have converted innocent opinions into

heresies, the former have construed faithful testimonies, or accidental observations, into public crimes. Making their own pleasure, or precedents drawn from Star-Chamber, High Commission, and the Civil Law Courts, the rules of their proceedings, they acknowledged not the spirit, or trampled on the principles of the Common Law, the law of the land. I am now speaking more particularly of public Libels. And what shall I say? To give some colour to their own measures—to seem acting under the authority of a system which puts no restraint on power, they chose rather to maintain, that we received all the Law and Constitution which we have at the point of William's sword, than to admit that Englishmen had any fundamental rights—any constitutional claim; as if all our property was to be received as an act of grace from the Crown, and all justice as an act of grace from our Courts of Law\*.

\* After much written about the Conquest, whether by the friends of arbitrary power or others, all that belongs to our question lies within a small compass, and may be deduced from the title to the Laws of William I. (written in Norman French)—“Ces sont les Les & les Costumes que li Reis William grantut à tut le Peuple de Engleterre, après le Conquest de la Terre: ice les meismes que le Reis Edward, sun Cosin, tint devant lui:”—that is, These are the Laws

Under this dereliction, even persecution, of British principles, of what incalculable value has

and Customs which William the King granted to all the People of England, after the conquest of the Realm; they are the same as King Edward, his Cousin, observed before him.

Notice has been taken, in a former Essay, on the sense of the word, "Conquest," by many writers; and Sir Matthew Hale, together with Judge Blackstone, puts on it the same sense. Wilkins, in his *Anglo-Saxon Laws*, and Dr. Brady, understand by the word—absolute Conquest.

Yet, whatever may be made of that word, or inferred from it, nothing can set aside these words, "being the same as those which King Edward, his cousin, observed before him." It has been already admitted, that William did introduce some other laws, adapted to his new state of things. But though it has been denied, that the laws of Edward just referred to, bore any relation to the laws of William, and more particularly by Mr. Houard, a Norman advocate, in a work entitled, "*Anciennes Loix des Francois conservées dans les Coutumes Angloises, recueillies par Littleton, &c. en Rouen, 1760,*" that his arguments are unfounded, see well proved by Mr. Kelliam, in the *Preliminary Discourse to the Laws of King William*, subjoined to his *Dictionary of the Norman, or old French, Language*. He further correctly observes, that the word "tint" implies, that these laws did not originate even in Edward, but were handed down to him.

Further, let it be noticed, that William's are the oldest Gallo-Normannic Laws extant, and that there are no other laws of William extant, (Gallo-Normannic, I mean,) which he brought with him out of Normandy;—that the above laws

been the honourable testimony of men of high rank, and eminent in the profession of the law!--- In unfolding the original and primordial qualities of our Common Law---the authority of Parliaments---the rights of Juries; in making an exposure of unconstitutional statutes---of the unconstitutional claims of Ecclesiastics---and the undue influence of Crown Law—who can doubt, whether the testimony of Sir John Fortescue, Sir Edward Smith, Sir Edward Coke, and Sir Matthew Hale; and, in later times, that of Mr. Daines Barrington, and Sir Michael Foster, have had great weight, not as oracles of law, whose opinions were to be received with implicit faith, but as great, no less than learned men, to whom some deference was due, and whose suggestions were felt in their influence? And who can doubt, whether the evidence of men of high professional rank in modern

were only a manual, as indeed the Confessors were, of the Saxon Laws;--that he was bound by his Coronation Oath, to rule by the Saxon Laws;--and that the customs and laws all over England were collected, that the people might be governed by them: *Post acquisitionem Angliæ Gulielmus concilio Baronum suorum fecit summoniri per universos Angliæ consulatus, Anglos nobiles, sapientes, et suâ lege cruditos, ut eorum leges, et jura, et consuetudines, ab ipsis audiret.*--See Spelman's Glossarium, et Ll. Edwardi Regis. The reader, who knows what these laws, and rights, and customs were, will make the proper inference.

times, on similar subjects, will produce similar effects on futurity? just as when waters come from an eminence, they flow on rapidly, and, sparkling as they descend, are seen at a great distance.

Nor should the evidence of Blackstone be omitted; for though I cannot reconcile to fundamental principles what he says,---on the policy of receiving into our system some rules of the Imperial and Pontifical laws---on our religious liberties being fully established at the Reformation---on our civil and political liberties being completely regained under Charles II---on the effect of the Test and Corporation Acts---on the powers and rights of Juries---and on some few other points, ably illustrated by Dr. Furneaux\*; yet do his significant discriminations, and open applauses, of what is to be admired in our Constitution, carry considerable weight; and the blemishes alluded to, are perhaps rather to be referred to his professional bias, than his true British feelings. For when we fairly estimate the caution with which he often speaks, the concessions which he sometimes makes, the steps which he evidently measures back, his exposure of the oppressions and alterations of our laws under William the Conqueror, together with

\* Dr. Furneaux's Letters to Judge Blackstone.

his remarks on the solid improvements introduced by Magna Charta under King John, and by King Edward; when, further, we perceive he admits, that “the royal prerogative was strained to a tyrannical and oppressive height under Harry VII.,” even to the time of Charles II.; and that “our civil and religious liberties were not fully acknowledged till the Revolution\*,”—when all these matters are duly estimated; and when, above all, we consider the liberal statement made by him, of natural rights—of civil and religious liberties, as involved in the claims of the English Constitution; when the import of such testimony from our able commentator on the laws of England is considered, we must take it as ample and full; as a well meditated eulogium on the principles of English liberty, in a more enlarged, extensive sense.

With respect to the legislative functions of the two Houses of Parliament, the reader is aware it is accounted essential, that each should possess its distinct prerogatives—distinct privileges—distinct powers, as independent of the other; and that, as the higher house may not affect the independence of the lower in its legislative character, so, if any individual peer interrupts the purity of elections

\* Blackstone's Commentaries, book iv. ch. 33.

by bribery and corruption, he is liable to a severe fine. But a nobleman can use his influence for good, that is, constitutional purposes, as well as for unconstitutional, which would be for bad. Nor have we any magical power, either in church or state, that can prevent a nobleman, truly great, from moving in a wider circle than that of Xenophon's maxim—"Nobles think only of nobles; the people will take care of themselves."

I allude to a small work, written by a nobleman, the Earl of Halifax, entitled, *Cautions for the Choice of Parliament-men*. Its aim is to guard the elective franchise against every species of unconstitutional influence: it unites much closeness with much elegance, and is admirably calculated to promote the end for which it was written: it has accordingly been used, if I mistake not, by some members of both houses, for the most constitutional purpose,---to preserve freedom and purity of election: I at least recollect, it was so used by one member, who printed a large edition of the work for the purpose of distribution\*.

But, it is manifest, that a nobleman, who could use this influence consistently, must forego that

\* It was reprinted in 1802. The pamphlet is extracted from MISCELLANIES, by the Earl of Halifax, published in 1700.



power, which by the same stroke destroys the elective franchise of thousands, and carries a shock to the House of Commons, which is felt through the whole body.

I am aware, (as I before observed) a modern writer says, “that if the saleable boroughs were annihilated, the disease of the Constitution would be scarcely affected: the Executive Power will influence the Houses of Parliament, as it influences the Houses of Convocation.” The writer, however, does not avow that opinion as an apology for saleable boroughs; nor does any thing advanced by him affect my conclusion\*.

3. I proceed next to consider the Prince Regent as an organ for transfusing the fundamental principles of the English Constitution: for as no individual is so humble as to be below notice in this proposal, no individual should be considered so high as to lie beyond it. In civil society, every individual should feel his proper weight, and discharge his proper dues.

The writer last alluded to observes, “that Machiavel would have a prince, who is ambitious of praise and immortality, choose for the scene of his glory a state, that is corrupt and decaying, and to rectify and restore it.” He supposes this country

\* Preparatory Studies for Political Reformers.

to be at present in that state, and that the influence of certain proposals were intended for the mind of his Majesty, through the interposition of the Heir Apparent. He adds, “ I should certainly not have proposed these thoughts as leading to a plan of Reform, preferable to any requiring the interposition of the people, if I had not understood, that those high personages had been lately brought into numerous, affectionate, and confidential relations, by the circumstances of the times ; and that the sentiments expressed by the Prince are most becoming in respect to his Royal Parent, and most consoling to the people.”

The unfortunate malady of the King having interrupted this intercourse, it is unnecessary to inquire into its object, or its probable result ; and knowing nothing of the subject beyond what that passage furnishes, I pass to the leading design of this Essay.

It is unreasonable, it would be impertinent, to suppose, that a Prince, born to be one of the legislative organs, and the principal Executive Magistrate, of a great empire, should have been inattentive to the principles, on which its Constitution is founded, and by which it is to be governed ; and that an early bias should not have impelled his mind towards those studies from the

writings of his tutor\*. Who has so many interests, so many duties, and so many pleasures, involved in them, as the Prince of Wales? Who has possessed more opportunities for seeing the ruinous tendency of principles, opposing at once the more enlarged maxims of our English policy, and the laws of nations, than the Prince of Wales? Who more reason to lament over that spirit of commercial despotism---that affectation of rule on the seas and over the continent---those unfounded presumptions of our shackling, monopolizing system of trade, than the Prince of Wales? Who to perceive the occasion of that combination of European powers against us—a dark host of departed friends, like the Prince of Wales? Who to inquire into the failures of our best-concerted expeditions; the derangement, the entire disorganization, of all our financial systems---bubbles floating in the air, bursting, and disappearing---like the Prince of Wales?

When we call that British politics, which is at variance with British principles—those politicians, patriots, who are merely lovers of themselves, it is only as we give things nicknames. He who should be able to unite the interests of this country with the peace and happiness of

\* The late Bishop of Worcester's Dialogues on the English Constitution.

Europe, would be a true British Prince, qualified to foster and promote the genuine principles of liberty through his own favoured island.

England's boast is, her free Constitution. All true Britons know this; but they also know, that a government by factions is not a free government, except as a nickname. A Prince Regent of Great Britain should not survey the country from the little Goshen of self-seeking politicians (to borrow an allusion of Locke's) surrounded with partial laws, and exclusive privileges. He is by his station placed on an eminence, and should survey the full prospect round: he should contemplate the different sections of society, earnest for their civil rights, as urging a just claim, as warmed by an English spirit. And a prince, instrumental in their obtaining their due proportion of civil privileges, would, let us not say, be merely qualified to promote the principles of English liberty, he would by the very act do so; for cemented as these different sections would instantly become by a common interest, there would flow out, in a thousand directions, a light, which would at the same time transfuse truth and extinguish faction; while the prince himself would be considered as a central point—the source of original communication, and constitutional knowledge.

Measures pursued in arbitrary times, however pleaded for on principles of civil or canon law, cannot be defended on those of the common law, the law of the land \*. And could it even be shewn that the accidents of particular periods rendered them expedient, when that expediency ceases, the operation of those laws should cease ; and a reflecting prince should examine those measures by the principles of the Constitution, not bring the principles of the Constitution to the standard of those measures.

The restoration of long-lost rights, as being a medium of political information and political attachment, has, by numerous claimants, been repeatedly urged, and is now imperiously demanded by the times : and Machiavel's rule, " for Hereditary Princes not to transgress the examples of their predecessors," should be taken in its connexion with the other—" to comply and frame themselves to the accidents that occur."

The examples of those predecessors, who themselves, by their *personal* authority, transgressed the limits of the Constitution, would be bad precedents to one who is to be a Constitutional King. Besides, were those measures constitutional, a wise prince should consider, that all human things

\* Fortescue de Laud. Ang. cap. 24, 25.

change, and that constitutions change too, and may change for the better. With the increase of property, feudal severities have ceased, to the great improvement of civil society : but the accidents that have occurred, and are occurring still, speak with a loud voice, That the Political Body moves with energy and force, by due assistance of its parts ; and that the limbs, which have unnaturally been dissevered, should speedily be reunited, if we desire to restore the body to form an harmonious whole.

4. As the King in a constitutional sense, never dies, his personal malady does not affect this question : he exists in his two-fold capacity—as one of the estates of parliament, and as the supreme executive magistrate.

In his former capacity, the King can make no law—he can alter none. Each estate is independent of the other. Their separate movements coalescing in one will, produce Law : a power exceeding that just movement, is unconstitutional, and may be called Influence—that more refined species of corruption, proclaimed to be essential to the English Constitution. But I pass it, as an excrescence—no natural vital part of our body politic : I pass all the king's legislative function, too, as that by which he has no right to act on the other estates of the realm.

By his executive power he may act—he must act, either for good or ill ; and which ever impulse he takes, the effects cannot be calculated ; for as from fountains proceed all the rivers and all the lakes, that are so proudly conspicuous ; and all the rivulets, and the brooks, and the rills, which take a more secret course ; and as the reservoirs are supplied thence, administering both to the necessities and comforts of private life, so is the **King**, as supreme executive magistrate, the source of all executive power through the land ; for he not only chooses his own counsellors and ministers, but all great officers of state---all the high functionaries of public trust, whether civil or ecclesiastical, or naval, or military ; and in proportion as inferior officers originate in, and derive all their commissions from, higher, we see at once how the power of supreme magistrate reaches all authorities, and pervades each portion of the community. Nor does it rest here : for though, as one of the estates of parliament, he exercises no legislative authority in the **House of Lords**, yet he is the fountain of nobility, by his prerogative in creating peers. So wide is the **Royal Power**!---so ceaseless its operations!---so unavoidable, unmeasurable its extent !

How does a **King of England** promote the principles of **English liberty** ? When, proceed-

ing within the limits prescribed him by the Constitution, he eyes its fundamental principles as the central point; not cutting and crossing our civil and religious liberties, but moving, as it were, in the same plane with them. Some of our kings, in arbitrary times, have given to their proclamations the force of laws; have overawed parliaments; and, as despots, have *given laws*,---communicating to the people, like evil spirits, delusions and lies: but a true English king proceeds in constitutional order; and moving in harmony with the other legislative powers, like a guardian angel, encourages, invigorates, and recommends all that is excellent in our Constitution.

That “the king can do no wrong,” in reference to the English Constitution, is proved to be untrue by the principles avowed at the Revolution; as a political or legal maxim, every one understands what it means\*. In the right distribution

\* This, however, is a foolish maxim, and was probably derived from Eastern tyrannies. The language too, that “the King never dies,” was probably derived from absolute governments. This absurd language at least reminds me of the grand prerogative of the Chitome, the High priest of Abyssinia. When he is sick they knock him on the head; when aged they strangle him; and a high priest full of strength is immediately put in his place: and they mean by this barbarous absurdity to render the office eternal. The Egyptians served their God, Apis, the consecrated ox, in a



of his confidence, and a judicious delegation of public trusts, consists the power of the supreme magistrate, in his executive character, to do extensive good; for, by choosing his counsellors and ministers according to their known regards to the religious and civil rights of the community, and by appointing such men to the higher departments of public offices as his representatives, he transfuses his own power of conveying, as through so many ducts, true constitutional instruction to the people: and as he himself is, constitutionally speaking, responsible to the people, so will he, if conscientious, hold himself an-

similar manner. He must never die. Accordingly, when near his latter end they drowned him in the holy river, the Nile; and a fine hale ox was immediately placed in his room. The Mexicans had a kind of Apis, a man, whom they killed after nine days of high enjoyment: they repeated these words to the successor, "Lord, your pleasures are to be at an end in nine days." Bullenger, that ardent enemy to eastern despotisms, was as ardent a friend to kingly government, particularly to the English; and hence his great admiration of Montesquieu. See *Recherches sur l'Origine du Despotism*. Sub. fin.

Many of our forms, the title of our Prince, many privileges of our nobles, some peculiarities in estates and tenures, which have been altered, are, it is allowed, derived immediately from the Feudal System; but there is a sort of unction in our language, that seems to have had an Eastern origin.

swerable to his conscience, to prevent all violent derelictions of public duties—to check all deviations from the Constitution ; for such a capacity, in numerous important instances, he possesses. Indeed, public functionaries in the higher departments, in their ordinary course, naturally eye the ruling star, and by a sort of instinct are apt to go as that leads, whether it be in the order of the Constitution, or against it ; and thus the inferior officers regard them. We should hear little of informations *ex officio* (which, however approved by Blackstone, are not constitutional,) and other ungracious practices in our courts of law, to say nothing of other matters, any more than we do of the unconstitutional procedures once followed in High-Commission Courts and Star-chambers,\* if the supreme magistrate pointed right, in true

\*It is pleasing to recollect, that in some of these Informations *ex officio*, the late Attorney-General did not succeed ; and till he proceeds in a more constitutional way, by indictment, it is desirable that he should never succeed. It is no less pleasing to hear, that in one case (as I am informed) that Attorney-General received a check from the Judge on the Bench (Judge Bailey,) who suggested to him that he had better take another way ; and that no better a reply could be given by the Attorney-General, than that others before him had proceeded by information. But see Sir R. Cotton's Posthuma, p. 221, &c. where all the *law* on this subject is laid down at full length.

constitutional splendour. Such a king, by his conscientious selections—by his judicious arrangements—by his steady, well-directed conduct, might be the means of preserving in its purity, what is good in our Constitution—perhaps, of correcting its faults; he would possess, in the hearts of his people, a silent energy,---a powerful, virtuous, *constitutional influence*, which would communicate more knowledge, and produce happier effects, than the writings of all the royal authors, from the days of Harry the Eighth to the Revolution: he would blunt the edge of that sarcastic, but just remark, “that few kings reign;” and recall to the recollection of Englishmen, that they once possessed an Alfred.

May I venture to speak on a subject of rather a delicate nature, but, at the present moment, of the greatest consequence, and connected with the object of this appeal; involving as it does at once the nature of the Coronation Oath, and the claims of a numerous portion of the inhabitants of the United Kingdom? Is there any thing in the Constitution of this country, which opposes the natural rights of mankind? any thing which opposes their just rights, as citizens? If there is, we may be sure it is wrong. Is there any thing in the Coronation Oath which opposes those claims? That oath, then, is wrong. Natural

and religious rights are paramount to political constitutions, and, by consequence, paramount to the obligations of civil magistrates.

But let us coolly weigh the matter. We have already observed, that neither is there in *Magna Charta*, nor in the *Act of Settlement*, any notice of those numerous speculative opinions, which have since divided the different religious sects. The *Test and Corporation Laws* were introduced, it is allowed, between two periods, for the purpose of excluding papists, as such, from civil offices ; but, whatever may be said on the occasion of the introduction of such laws at first, the necessity for their continuance has ceased ; and we do society and individuals “an injury,” “however coloured with the names, and pretences, and forms of law,” by continuing them ; we do *bona fide* “declare war on the sufferers,”\* and throw men back again to Mr. Hobbes’s “state of nature,” which he declares to be “a state of war,” though we begin it. The modern catholics essentially differ from the old papists : they have proved themselves qualified to give a civil test “for their adherence to the Protestant Succession ;” we have no right, therefore, to require, nor does the case require, a *religious*, sacramental

\* Locke on Government.

test : and if the King, as one estate, in union with the other branches of the legislature, would but do his proper duties, we should see, both with respect to catholics as well as other non-conformists, the truth of what Bishop Hoadley mentions, “ That non-conformity to a church established by human laws, cannot be in itself a certain sign to Christians of any want of a due concern for the peace of church and state.”\* We give them civil tests, and to them even their *religion* binds ; but by religious tests we confine the church ; we *divide* the state ; we are neither good churchmen, nor prudent politicians.

Our limits do not allow us to consider the nature of an oath at large. In the case now alluded to, the civil magistrate binds himself by an oath, to uphold the *Protestant established religion*. Why ? Because it is the will of the majority. This was the doctrine acted on at the Revolution, ---That the will of the people was the law of the state. At the Irish Union, as in the present times, very greatly the majority of the Irish nation was catholic, and they had then a parliament of their own. They agreed to the Union, with either a direct assurance, or liberal insinuations,

\* See Bishop Hoadley's refutation of Bishop Sherlock's arguments against a repeal of the Corporation and Test Laws.

that the claims of the majority would be attended to. 'This was their ready *stock*, *before the union*, and the implied *bargain*, well understood by both parties, when *the union took place*. 'To recede, therefore from the condition, made under stipulations either expressed or implied, by the pretence of an oath, would be as contrary to the *import* of the oath originally administered, as to the stipulations afterwards made ; in short, contrary to the principles acted on at the Revolution. And it was, I apprehend, on observing this tergiversation, that some who spake zealously and admirably, at first, in favour of the Irish Union, did afterwards repent of their zeal, and altered their opinion, when too late. And shall we now leave the Catholics to say, at last, that we held out treacherous baits ? or do we choose to call them constitutional douceurs ? And do we wish to leave the Catholics under the imputation of civil credulity, and to take to ourselves the merit of a pious fraud ?

But after all, what is the express language of this oath ? What the point towards which it is directed ? and what the construction put on it by the legislature itself ?

The part of the Coronation Oath at the Revolution more particularly under consideration, is, as the question is still put by the Archbishop, and

the answer returned by the King, “Will you, to the utmost, maintain the laws of God, the true profession of the Gospel, and the Protestant Reformed religion, established by law? And will you preserve to the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain to them?—KING. “All this I promise to do.”

This approaches very near in substance to that most ancient Coronation Oath administered to a Catholic king, Edward II. by the Bishop of Winchester. Both relate to the civil establishment of religion: neither of them relates to doctrinal matters, any more than Magna Charta, or the Act of Settlement. I do not mean to deny that under William the Conqueror heresy and idolatry were Crown pleas, nor that the act of supremacy now has *religious* power within the church; but it has none without it, either from the Gospel, *the Christian code*, or from any fundamental law in civil society.

What are we to understand, what can we understand, by maintaining “the Protestant Reformed religion, established by law” (with respect to those without the church,) than this, that the civil magistrate will give the established church his civil sanction—his religious profession (for he

must be a Protestant;) that he will authorize provision for the regular clergy, and protect the temporalities, while it continues the will of the majority? for without this sanction, whence was our authority for altering our church, which, before it became protestant, was catholic? This it is to preserve what have been called, the Rights of an Established Church.

When it is said, “Will you, to the utmost of your power, maintain the Gospel, &c.” what can it mean? Must it not mean all that he can *constitutionally*---all that, as a king, he is “able to do,” as the old act expresses it? Must it not be necessarily so limited? and would we lay unconstitutional burdens on the Supreme Magistrate of the United Kingdom? *Literally* speaking, a king might write more religious treatises than Harry VIII. or James I. put together; and preach more sermons through England, Scotland, and Ireland, than George Whitfield; and yet not do all *that was within his power*.

And what has been the interpretation put by the legislature itself on the *laws*, and *customs*, and *statutes*, mentioned in the Coronation Oath? Have no laws been repealed since that Coronation Oath was administered at the Revolution? Have not some *religious* points been conceded to Protestant Dissenters? Has not non-conformity



been declared, by statute, *to be no crime*? Was not its cause, on that principle, openly maintained in the House of Lords, by an able Lawyer, Lord Mansfield?\* Has not the same cause been zealously advocated in the House of Commons? What then is the sense put on the Coronation Oath by the legislature itself?

Further, Kings of England, on their accession to the throne, have sworn to maintain the settlement, relating to acts that affect the established religions in England and Scotland; and yet two acts of the Scotch Parliament were afterwards either altered or repealed; and one most material alteration was made, relating to the patronage of livings, which has been called a violation of the Union, and was brought forward by the *enemies of the Protestant Succession* against the sense of the people of Scotland.—What was then the import of these acts? Was it not that the alteration of statutes, of penal statutes, may be made, notwithstanding the Coronation Oath? And has not the legislature itself given a sanction to this doctrine?†

\* See his Speech at the end of Furneaux's Letters to Blackstone.

† On the Act of Patronage in Scotland: see an Enquiry into the Principles of Ecclesiastical Patronage and Presentation, p. 29.

It is greatly to be lamented, that Judge Blackstone should at all have spoken in favour of our penal laws, when it is evident, even to candour itself, that his better feelings flowed from a purer source. A constitutional king should distinguish, as constitutional lawyers do, a Commentator on the Laws of England *looking towards the Bench*. For Blackstone, when he wrote his Commentaries, was only *looking to be* a judge; and this is the true key to his inconsistencies.

To guard what has been said, let it be observed, that it is not denied,---it has been granted,---that before, and at the time, when Magna Charta was granted, church and people formed the same people. To those times Hooker's observation well applies: "The church of England and the people of England were the same people." It is, however, still true, that Magna Charta has nothing doctrinal in it; and no less true, that Hooker's maxim does not apply to the times since the Reformation. Men, exercising their own faculties, and following the dictates of their consciences, have formed different opinions on doctrinal articles, and church government; while philosophy, more unshackled from bigotry, has breathed something of the empyrean of liberty: Experiments have proved to be true, what bigots and politicians denied.

Civil and religious liberty, is the only true cement of the English Constitution: penal laws are wedges driven violently into it, and keep the parts wide asunder: these were never genuine parts of it, and, wherever they appear, are sophisms intermingled with eternal truths. It is time that these sophisms were untwisted: we should revert to fundamentals, and distinguish what is merely legal from what is constitutional. As to the old Coronation Oaths, they were administered when the nation was united in one faith; the new, when the nation was split into religious sections: and, if by maintaining the true profession of the Gospel, any thing more is meant than professing the reformed religion, and giving its teachers a civil sanction, it goes further than any civil magistrate is authorized to go by that Gospel; it is contrary to right reason, as well as to true policy, and may become a trap to a conscientious king, no less than an insult to those of his subjects who have any conscience left. No oath, that binds a king to the will of the majority, can authorize him to resist the will of the majority; and no government could, constitutionally, impose such an oath on an English king.

Conscience is that secret council-chamber erected in the breast of man by the Great Power that formed him---a mysterious vice-gerency, that

brings nigh to human beings that Presence, which fills the universe. Kings, as well as subjects, are under its dominion; and for their *religious* feelings and apprehensions are accountable to that tribunal alone. A king is bound by his religion, in his personal character, *in foro conscientiæ*, as much as a subject; a subject as much as a king. But, does a subject forego his civil rights by embracing religious opinions? Or can a king, in his political character, be released from his obligation to protect a citizen in his natural rights, and civil privileges---that being the very end of political society,---the only just foundation of civil government? Liberty of conscience is every man's inalienable birthright,—a franchise, of which no being on earth has a right to disinherit him; and for the peaceable enjoyment of which, he should forfeit none of the common advantages of civil society.

In short, to speak without reserve, every member of a civil state is, in matters purely religious, under the great Theocracy: and shall a feeble local king, the magistrate over a few acres of ground, dethrone from his peculiar empire, the human conscience, the **KING OF THE UNIVERSE?**

It was lately hinted by a Prince of the blood, in the House of Lords, that the unfortunate malady

of a great personage might, perhaps, be traced to the perplexities in which this question had placed him. What a hint to an heir apparent to have done a splendid action! What a hint to that great personage, should he be ever restored?

5. As to the People at large, it should seem but a principle of moderation, to say, that in a cause which concerns every individual, no individual should be wholly indifferent. For though individuals may ask, what good can we do? Yet, as it is reasonable, that every man should know something of his birthrights, it will be natural for him sometimes to talk of them. Is it not also agreeable? Is not love of liberty a natural passion? like all natural passions, is not the very feeling of it delight, and to converse about it, does it not refresh the spirits?

The Liberty of the Press is a scion of the good old tree of English liberty; and although liable to some luxuriance, it bears much wholesome fruit. True it is, it may be prurient, but it must not be lopped off. The art of printing itself has been the means of propagating some errors,---some absurdities,---some malignities; but by leading to truth and philosophy, it has been favourable to human happiness. And the liberty of the press, though that press may occasionally be licentious, is by its general tendencies naturally

salutary, and more abundantly beneficial to mankind.

Thus the public papers, which may be considered as kind of registers of the times, often lead mankind to much important truth ; for, though they frequently subserve people's particular interests or passions, and lead far enough from liberty and truth, yet, when directed by wise and well-principled men, they conduct to much good,---they bring out much political information ; and their very oppositions often produce elucidations : for as flint struck against steel elicits sparks, so do the contentions of writers, playing at cross-purposes with one another, often throw out a light which keeps the unprejudiced in the right way. The debates of the House of Commons, as reported in these papers, have the same tendency ; for though they sometimes are at variance with the liberties of the country, and are sometimes made with more of gladiatorial prowess and violence, than of legislatorial dignity and principle, yet when men of generous, disinterested feelings bear testimony to the best principles of the Constitution, their words, like seeds borne by the wind, and carried to a distant soil, are conveyed far and wide to many an unsophisticated heart ; and taking deep root, they produce the most solid, evergrowing advantages.

Time would fail me to notice particular persons, who in their private capacities have felt agreeable employment in distributing useful pamphlets on the principles of English Liberty, or to point out the worth of those pamphlets illustrated by them ; but their ardour is entitled to much praise. One example I cannot forbear noticing :--It is of a private gentleman, who, after travelling in foreign countries, sat down quiet and delighted in his own ;---petiit placidam sub libertate quietem---and who, admiring the best principles of the English Constitution, as unfolded in the political writings of Sidney, Milton, Marvel, and Locke, published them at his own expence. Portions of these were selected for a wider circulation. The complete copies were distributed among private friends, or deposited in various public libraries throughout England and Scotland. Nor was his zeal confined to his own country : copies of these works were conveyed, under his direction, and at his expence, to public libraries in North America, in Holland, and Switzerland. A testimony this, worthy of a true Englishman, creditable to his nation, and highly honourable to himself,---beneficial to his own countrymen, and, no doubt, singularly beneficial to mankind at large !\*

\* Memoirs of Thomas Hollis, Esq.

Societies have been formed with similar views, to convey constitutional information, more enlarged views of our representative system, and to support the liberty of the press: some composed of untitled citizens, others combining with them members of both houses of Parliament. That effects proportioned to their wishes and plans were not produced, was owing, in part, to the interposition of government,—in part, to other causes not so obvious to a hasty survey. Shall we say, that no good was effected? The full influence of useful truths, no less than of pernicious doctrines, is not to be calculated by immediate effects. It is not the mere depositing of seed in the bosom of the earth, which can cause it to grow: that seed takes a new place,—it must strike root,—undergo a chemical process by means of other bodies, with which it comes into contact—and depends on other influences, independent of the power of individuals, or societies of agriculturists; what retards its growth, may perhaps strengthen its vital principle, and prepare it for a more peaceable issue. Such may be the issue. But shall man be confident? Blasts and mildews may scatter, or wither, his rising hopes suddenly.

Political societies are sometimes composed of men not united among themselves, and have to contend with other societies united against them



all. Our condition, as a civil community, also, is not the best calculated to admit constitutional information. We are a rude mass,---a loose combination (if those words may be used together) of different interests,---of different passions,---of different religions, and different corruptions. Should government ever study the real interest of the community, as well as its own, it would unite its influence with such societies, should any such arise, for the perfection of our representative system. This once attained, we might boast of something like a perfect Constitution. Understanding, perhaps, better than our Saxon ancestors, the nature and end of representation, we might learn much from their wisdom in *realizing* the plan: as, indeed, than their ancient division of England into Tithings, Hundreds, and Counties, nothing was ever more admirably devised for mutual protection and confidence,---mutual justice and benevolence; and nothing would be better calculated for the destruction of all party spirit, and the propagation of constitutional knowledge. Happy for societies of men, if from their laws and governments much of that rubbish was removed, in which the primitive truth, and the most salutary maxims, lie buried and almost forgotten! But let our spirits be erected, and let us be assured that if ever societies are *rightfully* restored, it

must be by the exercise of Reason, and the impartial administration of Political Justice\*.

In conclusion, it should be confessed, what must have been observed by the reader, that no attempt has been here made to delineate many of the minuter distinctions, those lighter shades of political character, which distinguish the English Constitution from every other system. In like manner, the principles, rules, and forms of distributive justice, whether civil or criminal, together with the customs and practice of our courts of law, are passed by. They did not properly make part of the present plan; and the reader must be referred to systematic writers, who professedly treat of them. It should, however, be observed, that such writers are too apt to overlook the defects of our system, and even sometimes, to call defects excellencies†.

Neither for the defects complained of has any specific remedy been proposed. But a dispa-

\* Those who consider how the spirit of a government pervades every part of a nation, will see much truth in the observations, "that of all the modes of operating on the mind, government is the most considerable;" and again, "that it may be reasonably doubted, whether error could ever be formidable or long-lived, if government did not lend it support." *Godwin's Polit. Justice*, Book 1. Ch. 4.

† This is true of Montesquieu and De Lolme.

sionate and enlightened reader will not be indifferent to the subject, cannot be unprepared to give it a most serious examination. It is something, that many of the ablest and most upright men among our legislators, in both houses, and of different parties, have set the example: including May 14th, 1770, when the EARL OF CHATHAM moved an *Address to the King, to desire he would dissolve the present Parliament*, and May 8th, 1812, when the Honourable THOMAS BRAND moved for *leave to bring in a Bill to repeal the Act 31 Geo. II. c. 14, and to entitle Copyholders to vote for Knights of the Shire*, the question of a Reform in Parliament has been agitated fifteen times. Which of the plans was most happily conceived, which most plausibly supported, or which might be most successfully realized, I presume not to decide. Out of the several schemes,---for they differ, and were supported by different arguments,---some able politician, perhaps, might form one, which would prove the remedy for at least some of the evils complained of in these ESSAYS.



## POSTSCRIPT.

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**T**HE following Postscript is added, to supply a few omissions.

In proof that the English Constitution is a Constitution in Church and State, it should be recollected, that at the beginning of the Reformation, under Henry VIII. one *great principle* on which they proceeded, was, that the Kings of England had been accustomed to have authority in all Ecclesiastical matters, from very ancient time. Accordingly, Lord Cromwell, a layman, was appointed the King's *Lord Vicegerent in ecclesiastical matters*, and, in that character, exercised *jurisdiction*. This he did at first by the king's sole authority; but the title of *supreme Head of the Church*, was, (though first opposed by the clergy, who, however, soon complied), obtained for the king, and finally settled by AN ACT OF PARLIAMENT. This was

passed 15 Feb. 1533\*: and Henry was empowered, both by the clergy in convocation, and by the legislature at large, "to exercise all spiritual jurisdiction:" and, though the bishops and clergy have their distinct functions now, yet every one of those functions, in its origin, was a trust derived from him, even ordination itself, and in strict constitutional language, is so still. This *legislatorial act*, thus received and sanctioned by both houses of convocation, will justify, without any further illustration, it may be presumed, our adopting the phrase, a Constitution in Church and State, a phrase, which, I think, is not generally received.

In saying, somewhere, that a convocation is merely a *civil* power, I have followed the ideas of our most eminent writers on this subject. A convocation was called by *the King's writ*, at the time when Parliament is assembled; a synod by the Bishops'. Should it be said, that the clergy, assembled in convocation, sometimes transacted ecclesiastical business, it should it be recollected, that though assembled by the King's writ in convocation, they may have been constituted a synod by the Bishop's writ, at the same time. The former used to be summoned when parlia-

\* Burnet's Hist. of Reformation, B. 1.

ment assembled, and accordingly, they were sometimes called “Parliamentary Conventions.\*”

Theories of government are delicate subjects, though not mysterious; and become more delicate, in proportion as they are more mixt and intricate. But, in reading the preceding pages, readers must distinguish what is said in a way of mere statement, from what might be said in a way of censure and approbation. It may be sometimes sufficient to speak of facts in a way of statement; in which case a writer is to be charged with no responsibility, except for correctness. Whatever his private opinion may be, if there is little merit, there is at least no crime, in not setting much value on his own opinions, and in paying some deference to the public will and authority.

Some, I am aware, are not over-fond of the way followed in these Letters, in speaking of the English theory of government, as a *Constitution*; for there are those, Monarchists as well as Republicans, who think the English have properly no Constitution, and that every thing supposed under that term is, and ought to be, resolvable into

\* See Archbishop Wake's State of the Clergy and Church of England; and Authority of Christian Princes, &c.

the power and will of Parliament. Such writers seem to consider the word, Constitution, as a metaphor. They will then, at least allow me to carry the metaphor a little further: the regular entrance into the more secret parts of a building is by the door: and if we would ascertain the character of the structure, either as a whole, or in its several parts, according to the rules of science or taste, we must consider the particular *order* (to use architectural language) to which it refers. To speak *without* metaphor, all must allow, that there are some political principles, which, more than others, are agreeable to the *usual practice*, and *genuine spirit* and *character* of true Englishmen: and my particular zeal does not extend much further.

It is the practice with professed admirers of the English Constitution, to close their eulogiums with a prayer for its perpetuity; “*Esto perpetua!*” But our affections, like every thing else, are subject to laws: and for myself, though my submission and deference are cheerfully yielded to what is established, my devotion can only be paid according to my own ideas of what is good; and no true Englishman can wish continuity to any thing, but what comports with the true dignity of the English character.

This devout ejaculation, “*esto perpetua!*”



seems to have in view a passage in a fragment of Cicero, in which that great man says, that a state should be so constituted, that it might be eternal\*. St. Austin † refers to this fragment: and Toland has sanctified the idea, by applying it to the commonwealth of Moses, which, though it was never perfectly acted upon even in Judea, he thinks the most perfect that was ever formed: and hence he infers, either that the author of it was God, or that Moses must be ranked among the greatest politicians‡. Harrington too carries the idea into his Oceana.

Whether this absolute perfection can ever be realized in any human institution, may be reasonably doubted: but we all know that a theory of government loses its name, if it does not govern. We all know what has been thought of perpetual motion in mechanics, and what Montesquieu

\* Debet enim constituta sic esse civitas, ut æterna sit. Itaq. nullus interitus est reipublicæ naturalis, ut hominis, in quo mors non modo necessaria est, verum etiam optanda persæpe. Civitas autem cum tollitur, deletur, extinguitur, simile est quodammodo, ut magnis parva conferamus, ac si omnis hic mundus intereat, ac concidat. *Ciceronis Fragmenta Philosophica*, Patricio Digesta.

† De Civit. Dei lib. 22, cap. 6.

‡ *Two Problems* on this subject, *the Commonwealth of Moses*, at the end of his *Nazarenus*.

thought of this theory of the English Constitution---“ It will perish ! It will perish, when the legislative is more corrupt than the executive.”

As to a theory of government that does not govern, it is in fact nothing ; or to say the most, if it loses its principles and character, it ceases to be what it was\*, though it should even retain its form.

Perhaps, however, after all, it is even dangerous to nourish too fond ideas of inherent perfection. It is certainly often found to be so in the experience of individuals. Self-love is apt to engender self-confidence, that rock on which virtue has often suffered shipwreck : and hence that humbling maxim, “ A haughty spirit goeth before a fall.” Besides, as there is no individual, that may not derive benefit from other individuals, so it would be unfortunate in a nation to consider itself so isolated by its own excellence, too often imaginary, from others, as to be incapable of receiving any improvement from their ex-

\* This was a severe reproach brought by Cicero against the Romans of his time : *nostra vero Ætas, cum Rempublicam, sicut picturam, accipisset egregiam, sed jam evanescentem vetustate, non modo eam coloribus iisdem, quibus fuerat, renovare neglexit, sed ne id quidem curavit, ut formam saltem ejus, et extrema tanquam lineamenta, servarit.* *Fragmenta Philosophica.*

perience. Even absolute governments may have in them much that is good; and the freest governments in the world may incline to what is bad.

When the Emperor of Russia was in this country, he expressed great approbation of those views of the English Constitution, that were held by Mr. Fox, at the same time adding, that the world was not enlightened enough to receive them. Yet Alexander is improving Russia very fast, and four or five of his provinces he has actually delivered from their wretched slavery. The government, it is true, is absolute. The Emperor, and eighteen Counsellors, chosen by him, give laws to the whole empire. Yet even here, of those eighteen Counsellors, some are of the Greek Church, some are Catholics, some Protestants; some are Russians, some Germans. It is at least not a government by exclusive privileges. Here Russia then might reflect light on England: and in its conduct towards the Jewish Christians, which has been lately announced, there is much that may instruct us.

Again;—we have not shewn a backwardness to receive instruction from our enemies. It is well-known, that the military tactics now followed in the English army were derived from the French. Would it be weakness to go a step further, and take a hint from their Concordat,

and even their present Civil Code? Perhaps they were taught *Toleration* from us. But they now go beyond us, in not authorizing exclusive privileges, and in admitting men as citizens to participate in the several offices of the state.

So—America, which is indebted to England for its principle of representation, can repay the obligation now, by teaching England how to preserve its purity, both with respect to the electors and elected.

In speaking of the parliament I have only mentioned what *properly* constitutes it so: though formerly, the Barons of the Exchequer, the King's Privy Councillors, and learned Council, had writs, though not *tenuræ aut dignitatis ratione*: but they had no voice, and consequently no proxies. The judges continued to have writs in Edw. I. II. and III's. reigns\*.

Some writers, learned in the law, have pointed out the defects and excesses of our statutes†, under distinct heads; and the late intelligent Lord Stanhope, it is well-known, formed the design of reducing the immense mass of them into something of an abridged, and regular order. When Englishmen shall enter into such en-

\* Elsynge on Parl. § i. iii.

† Judge Barrington on the Statutes, and an Abstract of the Penal Laws, by Capel Lofft, Esq.

lightened views, they will have rules of discrimination, and an opportunity of surveying, by a clear and easy view, what now covers an immense space, a body of Constitutional Law.

What relates to the Laws of England, certainly should relate to its Constitution : but in the present case it became necessary to preserve limits; not even to attempt much ; and only to refer *to the common law*, as it concerns civil and religious liberty ; to the common law in its highest, most precise, and defined sense, as it is a law of PRINCIPLE, in opposition to arbitrary decrees, unconstitutional statutes, to *cases* that may be *vague*, and precedents that may become dangerous. Such is the English Common Law : though I have been only able to glance at it, even under this view. But I feel a pride in reflecting, (such is its excellence in this point of view) that those very states, (I mean the American), who are not over-fond of some forms and principles in our constitution, do, in their courts, follow both the forms and the principles of our common law ; these being, it should seem, the most excellent of any they could devise.

And now, after this attempt to ascertain and define the principles of the English Constitution, accompanied with such feelings, as they naturally inspired, should it be asked, Cui Bono? What end is it to answer? I confess I am not prepared

with a reply, beyond what is given in the preface. It is pleasing to follow good principles in their progress to perfection: but should we, as some think, in the natural order of human affairs, or as a punishment for our crimes, be doomed to see what is deemed most valuable in those principles to crumble away, it would become a most affecting consideration: theories would then only perplex and confound us; and what might be matter of triumph, become only matter of humiliation.

I have thought too much on the Institutions of my country, to believe every thing in them right; and I love my country too well to pray for the perpetuity of what is wrong. I wish it public virtue, because I wish it public happiness: and I wish, that for the following sarcastic prayer there may be no predisposing cause, and that the import and effect of it may never rest, among the admirers of the English Constitution.

Virtutem videant, intabescantq. relictâ!

*Persius, Sat. 3. 33.*

N. B. The second paragraph in this Postscript, relating to Church and State, is unnecessary. I perceive, that the passage, which I thought had been omitted, is introduced in another, and a more proper, place.

THE END.













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